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THE

NORTH AMERICAN REVIEW.

No. CCL. — JANUARY, 1876.

Centennial Number.

REVIEWING THE COURSE OF AMERICAN THOUGHT IN

RELIGION,

ECONOMIC SCIENCE,

POLITICS,

LAW,

ABSTRACT SCIENCE,

EDUCATION.

1776—1876.

Tros Tyriusque mihi nullo discrimine agetur.

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The North American Review

For 1875.

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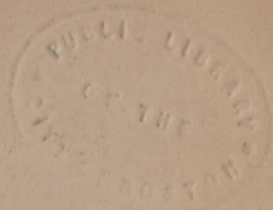
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NORTH AMERICAN REVIEW.

No. CCL.

JANUARY, 1876.

ART. I. — RELIGION IN AMERICA, 1776—1876.

THE Revolution which a century ago severed the connection between Great Britain and her colonies issued so directly from political disputes that its religious aspects have been obscured; yet no fact lies plainer on the page of colonial history than the intimate alliance of religious and political ideas,—a fact which the elder Adams emphasized when he cautioned the Abbé Mably not to undertake the War of Independence without first mastering the church system of New England. And it would form a singular exception to the ordinary laws of historical development, if that which is so evident in the causes of the Revolution could not be traced in its results. Those results supplied new ecclesiastical as well as new political conditions, and flowered, at the same time, in the novel experiments of a self-governed state and of a self-directing and self-supporting church. Nor should the formal separation of these two experiments betray us into the error of supposing that they are essentially distinct. They have been carried on together, by the same people, and during the same period, and throughout all this period have had a connection more close and real than will be conceded by such as are accustomed to look only at the superficial causes of political and social progress. There can be no doubt that whatever circumstances tend to affect the one must ultimately affect the other

also, and that any extensive modification of the religious sentiment would ultimately react upon political opinion. An acute critic of American society, not a religious philosopher but a political economist, has found in our experience a signal illustration of the principle "that there must be harmony between the political and religious schemes that are suited to a people"; and a later writer, the least inclined of any historian of civilization to lay stress on the spiritual forces that shape society, has indorsed Chevalier's maxim, in a striking passage which traces the influence exerted on political opinion by religious creeds. The religion of a people is, in a profound sense, a part of its history, and results in phenomena to which the mere political student cannot afford to shut his eyes.

The hundred years which we are passing in review have been marked by sweeping ecclesiastical and theological convulsions. Hardly had the last royal regiment left our shores when the sky grew black with signs of a more far-reaching revolution, and for a time altar and throne went down together. Since that return of chaos and old night, the vexed problem which Hildebrand and the Hohenstauffens left unsolved has harassed every European state. In France, in Italy, and in Germany the struggle has presented its most brilliant phases. In the South the Pope has been stripped of every vestige of a political dominion which long antedated that of the proudest royal dynasty; while in the North a new Protestant empire has been called into existence, which boldly remits to antiquaries the traditional relations between Germany and the Holy See. England, if less powerfully convulsed, has by no means escaped. The repeal of the Test Act, Catholic emancipation, the disestablishment of the Irish Church, are legislative measures which deserve to rank beside the Reform Bill and the abolition of the Corn Laws; and Mr. Gladstone has renewed the discussion of civil allegiance which Mr. Pitt opened with the Irish universities the very year that our Federal Constitution went into operation. The two greatest statesmen whom this century has produced have expended their supreme energies on the question which is, at this moment, the fundamental question of European politics. Nor have the revolutions of theological opinion been less marked. The

avowed atheism of the Revolution and the undisguised indifference of the Empire were succeeded in France by the ultramontane revival of the Restoration; the bold rationalism of Germany issued in the transcendental schools, and the various modifications of German theology and criticism; the evangelical movement in the English Church was followed by the great tractarian reaction; while the Council of the Vatican, contemptuously ignoring the political reverses of the papacy, proceeded to enunciate dogmas which touch, in their application, every state in Christendom. And while ecclesiastics and statesmen have been busied with these discussions, science has advanced new theories, which threaten to wipe out the lines of former controversies. In the vast range of investigation and argument thus disclosed, the most earnest and most adventurous thought of our time has found ample scope for utterance. It is certainly a matter of no little interest to ascertain what part we have played in this great drama, and how much we have contributed to the solution of these perplexing problems. From an estimate of the mere intellectual value of our civilization such inquiries could hardly be omitted.

In a survey of our religious progress covering so long a period, and presenting so many phases, of course only the more salient and characteristic features can be noted. No mention can be made of those exceptional manifestations of the religious sentiment, or those reactions of individual opinion, which, however interesting in themselves, have left no distinct mark on the public mind. It is the main current, not the side eddies, that must be considered. What seeds, now small and despised, shall attain hereafter a vigorous growth, it remains for time to show. A treatment so general is embarrassed with peculiar difficulties, on account of the unexampled diversity of religious phenomena which our history exhibits. To disentangle from this confused mass any common tendencies, to evolve from this dissonance any rhythmic movement, may seem at first sight an unpromising experiment, and one that to some, no doubt, will appear the less inviting from the pervading unpicturesqueness of our religious annals. The thrilling epochs of Old World history are when

the cross and altar fill the foreground of the picture ; when the brilliant narrative groups on a single stage all the heroic and venerable figures ; but the huge bulk of our American Christianity is broken into many fragments ; its energetic life is poured through various and widely separated channels ; whatever of romance gilds it belongs to its earliest youth. Yet neither the lack of romantic interest, nor the hindrances to a satisfactory analysis, should deter any one from an honest attempt to measure the real success of an experiment in which such great and manifold issues are involved.

We shall follow the most simple method if we fix our attention, at the outset, on the external features of our religious history ; and, beyond question, the most characteristic of these is the entire separation that obtains, both in our Federal and State systems, between the ecclesiastical and the civil province. So heartily is this accepted, and so unhesitatingly is it maintained, that it ought, perhaps, to be regarded less as an external feature than as a fundamental maxim of our body politic. He who should deny it would find it hard to gain a hearing, and would be fortunate if he escaped the reproach of holding an unfriendly attitude towards popular liberty itself. " It belongs to American liberty," says Leiber, " to separate entirely from the political government the institution which has for its object the support and diffusion of religion." The broad line of demarcation between the opinions of to-day and those which prevailed a century ago can nowhere be more distinctly traced than precisely at this point ; and the contrast that is presented the more deserves attention for the reason that it has hardly been touched upon with sufficient discrimination even by our best historians. That in all the colonies, previous to the Revolution, there existed a connection, more or less close, between religion and the state, is a fact often repeated and sufficiently familiar. Such a connection may be established in two ways : negatively, by means of tests excluding from public office or the civil franchise the professors of a certain faith ; or, positively, by means of legislation providing for religious establishments, or for the support of public worship. The thirteen colonies afforded illustration of all these modes. In all there existed religious tests, unless we regard as an unauthorized

interpolation a clause by which, in the community which welcomed the virtuous Berkeley, Montesquieu and Turgot would have been accounted aliens. Even Delaware and Pennsylvania, refusing any legal preference of religion, denied the franchise to all who did not profess faith in Jesus Christ. Most of these tests were borrowed from English law, and were due to the exigencies of English politics. But throughout the southern colonies the Church of England enjoyed a legal recognition. Into Georgia, where the social influences that operated farther north hardly found a place, it was introduced by the second royal governor. Unmindful of the principles which the wise foresight of Locke had sought to fix in the "Grand Model," South Carolina had taken the first step in the same direction before the close of the seventeenth century. In North Carolina it had found a place, though with meagre results, early in the eighteenth. In Virginia it was coeval with the civil constitution; and in Maryland, originally founded on the principle of complete toleration, it had so far triumphed that in the colony which Calvert had planted the rites of the Church of Rome could no longer be celebrated. And in New Jersey and New York, where the church was not established, it basked in the sunshine of an official countenance that secured it a hardly inferior advantage. Yet all this was but an attempt to transplant to the New World institutions which in the Old were already smitten with decay. The establishment remained a sickly exotic, striking no deep roots into the soil, and it almost withered away when scorched by the fervent heat of the Revolutionary epoch.

The statement has been repeated by writers who should be better informed, that before the Revolution the Congregational church system was established after the same plan in the colonies of Connecticut and Massachusetts. But in these two colonies there was not only no religious establishment, even the bare suggestion of one had drawn forth an energetic protest. When we study their institutions we encounter an experiment the novel and unique features of which have been too much overlooked. It was not even a reproduction, on these shores, of the scheme of Calvin,—at least as that scheme was expounded by his disciple Cartwright, and indorsed by the English Pres-

byterians; for that claimed for the ecclesiastical a complete independence of the civil power. From the decrees of the clergy there was no appeal. The church was a self-subsisting spiritual republic; and the province of the civil ruler was simply to see that her discipline was carried out. According to this theory, church and state were essentially distinct, and might come into angry collision. But the plan devised by the founders of Massachusetts aimed at a blending of the two. In their view, "the order of the churches and of the commonwealth" formed a complete and harmonious whole. It was a prophecy of the new heavens and of the new earth. Between church and state there could exist no antagonism, when both were alike but shapes in which one informing spirit masked itself. It is true that long before the Revolution this singular system had passed away. By the charter of William and Mary toleration had been extended to all Protestant creeds, and the right of suffrage was no longer restricted to church-members. But the ideas out of which this experiment had grown still survived in a profound conviction of the indissoluble alliance between the spiritual and civil order; and the stanch devotion of the colony to her traditions proved itself in an enactment requiring every town to support a religious teacher. This legislation rested on the unwavering conviction that religion was the foundation of society, and that the furtherance of religion was one of the prime functions of the body politic. Before we flout the legislators of Massachusetts for being behind the age, we should ascertain precisely what they sought to do. They were not emptying into the cup of colonial liberty the dregs of an old experiment. The support of religion, not the endowment of any specific church establishment, was what they had in mind. No doubt the overwhelming majority of the population were attached to the same form of faith, yet the statute left it open for each town to decide what ecclesiastical order it would adopt. An arrangement more liberal in principle never was devised. The theory thus applied to churches was precisely the same that was applied to schools. In this respect the minister and the schoolmaster stood on exactly the same footing. Every argument that could be adduced in favor of giving public support to one could be adduced in favor of

giving the same support to the other also. Religion and education were alike essential to the welfare of the state, and it was equally the concern of the state to see that both should flourish. When the number of dissenters from the early faith had sufficiently increased, the law was modified so as to allow each separate congregation to claim its proportion of the ecclesiastical tax for the support of a clergyman of its own persuasion. It contemplated no exclusive privilege.

The conservative character of our Revolution was shown in nothing more distinctly than in the deliberate manner in which, under the new political order, the several states proceeded to modify the old relations between religion and the civil power. Of necessity the formal church establishments which existed at the South, identified as they were both in origin and form with a foreign and hostile power, at once fell to pieces. But it is a somewhat rhetorical exaggeration of the fact when our foremost historian tells us "that from the rivers of Maine and the hills of New Hampshire to the mountain valleys of Tennessee and the borders of Georgia, one voice called to the other that there should be no connection of church and state." On the contrary, in every one of the new constitutions framed under the Declaration of Independence, with the single exception of that of New York, some connection of church and state was expressly recognized. Many of the restrictions that were retained may be properly described as "shreds of an old system" or "incidental reminiscences of ancient usages." Such especially were the tests, having their origin not so much in religious as in political antagonisms, which denied the franchise to Roman Catholics. These purely negative provisions, which in this country had little meaning, and were readily eliminated, were of a wholly different nature from positive enactments in which some of the States embodied the conviction that religion lay at the foundation of civil government. Thus into the Constitution of Maryland, adopted the very year in which independence was declared, a provision was inserted making belief in the Christian religion the condition of holding any public office. Massachusetts, four years later, retained a similar condition. In Pennsylvania every member of the Legislature was required to avow his belief in God and in the inspiration of the Old and

New Testaments. Delaware went still further, and demanded of every public officer a declaration of belief in the doctrine of the Trinity. The two Carolinas and Georgia required of every public functionary that he should profess the Protestant religion. Yet it is evident that in all these provisions the end in view was not the exclusion of any particular sect from the civil franchise, but the assertion of the religious basis of civil government. In Maryland and in South Carolina the public support of religion was still recognized as a duty of the State.

This conviction, however, naturally found its most emphatic assertion in New England, where the public support of religion was most strongly intrenched in popular tradition. As Connecticut continued under her colonial charter, without adopting a constitution, she escaped, for the time, any discussion of the question; but in Massachusetts it had already provoked a bitter controversy, and in the debates which preceded the adoption of the Constitution of 1780 it became the engrossing topic. The third article of the Bill of Rights, forming part of the Constitution, empowered the Legislature to make suitable provision "for the support and maintenance of public Protestant teachers of piety, religion, and morality." Against the whole principle of a public support of religion the Baptists had long been vehemently protesting. They had felt especially aggrieved by a law, passed in 1753, which enacted that no person should be reckoned of their persuasion whose name was not included in a list, the correctness of which must be attested by three Baptist churches. By a subsequent statute this list was required to be annually exhibited to the assessors of each town. Repeated complaints were made of grievous persecutions, and the year before the first blood of the Revolution was shed at Lexington, no less than eighteen members of a Baptist church were imprisoned in Northampton jail for refusing to pay ministerial rates. Remonstrances were laid before members of the Continental Congress then in session at Philadelphia, and before the Massachusetts Congress at Cambridge. At the Philadelphia conference, which was simply an informal meeting of certain members of the Congress, Samuel Adams intimated "that the complaints came from enthusiasts who made it a merit to suffer persecution"; while John Adams declared "that a

change in the solar system might be expected as soon as a change in the ecclesiastical system of Massachusetts." The opinions of the most serious supporters of the law will be found reflected in the annual Election sermons of the period. In 1770, Samuel Clark, of Cambridge, declares, "that in a flourishing and respectable civil state the worship of God must be maintained." In 1776, Samuel West, of Dartmouth, says that laws for "maintaining public worship and decently supporting the teachers of religion" are "absolutely necessary for the well-being of society." "The restraints of religion would be broken down," said Phillips Payson of Chelsea, in 1778, "by leaving the subject of public worship to the humors of the multitude." Rulers, affirmed Simeon Howard of Boston, in 1780, should have power to encourage religion, "not only by their example, but by their authority"; power not only "to punish profaneness and impiety," but to "provide for the institution and support of the public worship of God." A government which should neglect this would be guilty of "a daring affront to Heaven." These facts are sufficient to show that, while no desire existed with the great majority of the American people to retain religious establishments, the doctrine that the civil and the spiritual order were essentially related still had a powerful hold on the public conscience. Nor should this opinion be regarded as the result of any special ecclesiastical prejudice. On the contrary, it received its most impressive statement from laymen. Thus when Chief Justice Parsons, who was not at the time a member of any church, entered upon his official career, he took the earliest opportunity to express, in the most solemn manner, his conviction of the necessity of a public support of religious institutions; and still later, Judge Story declared that "it yet remained a problem to be solved in human affairs, whether any free government can be permanent where the public worship of God and the support of religion constitute no part of the policy or duty of the state."

It is only when we call to mind facts like these, that we can appreciate the full extent of the revolution in public sentiment which the past century has witnessed. To this result three wholly distinct causes have contributed. The first of these

was the number of religious organizations, widely differing in doctrine and worship, which rendered any public support of religion almost impracticable, although many of these bodies regarded such support without disfavor. A second cause was the conscientious objection of certain sects to any recognition of religion by the civil power. The third and most decisive cause was the rise of the secular theory of the state, a part of the great political development of modern times. Those who defended this theory did not profess, like the Baptists, to be governed by any religious scruples, but advanced the broad doctrine that state and church were inherently and essentially distinct. The great representative of this view was Mr. Jefferson, and it found its first expression in the famous Virginia act of 1785, which, in after years, he looked back upon as the most creditable achievement of his life. The phraseology of this act reflects no less distinctly than the Declaration of Independence "the semi-juridical, semi-popular opinions which were fashionable in France," and marks a decisive epoch in the development of American political theories. The change is illustrated in the two most famous of our political documents. When the Declaration of Independence was drawn up, it was still deemed proper to insert a solemn appeal to the Supreme Judge of the world, and an expression of reliance upon the protection of Divine Providence; but when the Federal Constitution was framed, a transaction surely not less vitally related to the well-being of the nation, all recognition of a higher than secular authority was carefully excluded, the sole allusion to religion being the provision that "no religious tests should ever be required as a qualification for any office or public trust under the United States." The First Amendment provided, further, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." The Federal Constitution imposed no restriction upon the religious legislation of the States, and did not directly affect their action, yet its thoroughly secular character came more and more to stamp itself upon them, till at length all trace of the former connection between church and state had disappeared. Laws for the support of public worship lingered in Connecticut till 1816, and in Massachusetts till 1833, and religious tests in

several States for a few years longer. But public opinion, from which all laws proceed, at length decided that the State, in its essence, was a "purely political organism." Provisions regulating the public establishment of religion, requiring the compulsory support of religious teachers, enforcing attendance upon public worship, restraining the free exercise of religious functions or the free expression of religious belief, have been expunged from the statute-book of every State. Not only does the maxim universally prevail that no particular form of religion should receive the countenance of law, but the far more comprehensive principle, that the spiritual and secular provinces are essentially distinct. Although our practice has not always been consistent with this maxim, yet in the main we have come to accept a secular theory of government. The effect of this upon our political life would furnish an inviting topic for discussion, but we are here concerned only with its bearings upon our religious progress.

There is no necessary connection between separation of church and state and the subdivision of the former into a variety of independent sects. On the contrary, the first three centuries of the Christian era show that a catholic and a self-sustaining Christianity are not incompatible. Still, the unique circumstances which shaped the settlement of the thirteen colonies, collecting on these shores the representatives of so many nationalities, at the crisis when their religious convictions were stimulated to the highest pitch, involved contrasts in ecclesiastical and theological opinion which the perfect legal equality subsequently established powerfully heightened. That tendency to carry conscientious differences to the point of separation, which Luther and his compeers bequeathed as a legacy to modern Christendom, was freed in this country from the restraints which held it partially in check in every Protestant state of Europe. The German elector, the Dutch burgomaster, the English king, however they differed on other points, were all agreed in giving legal preference to some particular form of faith. Here, for the first time, Protestant sects stood on an equal footing, and the national result was a variety of religious organizations unexampled in the Old World. This result had already shown itself before the Revolution; and Dr. Gordon, the future

historian of the war, tells us how much he was edified when he landed at Philadelphia, in 1770, by the spectacle of "Papists, Episcopalians, Moravians, Lutherans, Calvinists, Methodists, and Quakers passing each other peacefully, and in good temper, on the Sabbath, after having broken up their respective assemblies." What the good doctor saw that Sunday morning was a panorama of our future religious history; for the annals of religion in this country are the annals, not of one great national church, but of many separate communions; and in no other way can we so clearly present to ourselves the external features, at least, of our religious progress as by placing in contrast the leading religious denominations as they existed a century ago and as they exist to-day. Such general comparisons do not, of course, disclose the more subtile modifications of religious life, but they help us to estimate the leading drift. And although it has come to be the fashion, with some, to speak slightly of the "popular religions," it is by no means certain that opinions are less significant simply because numbers have embraced them.

At the beginning of the Revolution the Congregationalists, although confined mainly to New England, formed by far the most numerous and influential body. As the total population of the country was still a matter of conjecture, religious statistics must, of course, be accepted with allowance; yet, according to the most careful estimate, the Congregationalists, at this time, did not possess less than seven hundred churches. The number of clergy was rather less. But it was not in numbers simply that the great strength of the body lay. Unlike any other ecclesiastical organization then existing in the country, the Congregational churches were a vigorous native growth. Their distinctive polity, originally a part of the civil framework, was still linked with the same traditions. Hence resulted the important circumstance that they had never been a dissenting body, and had never felt that galling sense of inferiority which is provoked by comparison with more favored rivals. From the beginning they had been distinguished for conscious independence and proud self-respect. They had been sometimes harsh in their bearing towards others; but they had never themselves been welded together by any com-

mon suffering for their distinctive ecclesiastical discipline. The first generation of their clergy was renowned for learning, and a learned ministry had always been their pride and boast. No pains were spared to save the pulpit from the intrusion of unworthy or unbecoming occupants. So far was this feeling carried, that, in Connecticut, a law was passed, at a time when the excitement which attended the Great Awakening threatened to throw off wholesome restraints, providing that no man should be entitled to recognition as a clergyman "who was not a graduate of Yale or Harvard, or of some foreign university." While the organization of the churches trenched on extreme democracy, and, in theory, the line between clergyman and layman was almost obliterated, in fact the clerical position was one of almost unrivalled authority and influence. Though possessing no immunities, and connected by no official tie, they formed a distinct order, and enjoyed a social prestige such as was accorded only to the most considerable members of the community. The reverential regard in which the New England minister of the last century was held has nowhere been so vividly depicted as by the late President Quincy, whose length of honored days almost linked the extreme terms of the period passing under our review. The scene is Andover, and the time a Sunday morning: "The whole space before the meeting-house was filled with a waiting, respectful, and expecting multitude. At the moment of service the pastor issued from his mansion, with Bible and manuscript sermon under his arm, with his wife leaning on one arm, flanked by his negro man on his side, as his wife was by her negro woman, the little negroes being distributed, according to their sex, by the side of their respective parents. Then followed every other member of the family, according to age and rank, making often, with family visitants, somewhat of a formidable procession. As soon as it appeared, the congregation, as if led by one spirit, began to move towards the door of the church; and, before the procession reached it, all were in their places. As soon as the pastor entered, the whole congregation rose and stood until he was in the pulpit and his family were seated. At the close of the service the congregation stood until he and his family had left the church. Fore-

noon and afternoon the same course of proceeding was had." Not every country parson, of course, lived in the style of the Rev. Jonathan French, but all were treated with the same deferential homage. This illustration of the social position of the New England clergyman is not simply a curious picture of the manners of the period, but furnishes an important clew to some of the religious changes afterwards witnessed. The clergy formed an extremely aristocratic class, and it was hardly less their social eminence than their speculative teachings which ultimately arrayed against them a portion of the population.

Beneath the apparent unity of the Congregational body it was true that silent modifications were going on. The austere Puritanism of an earlier epoch had "smoothed its wrinkled front." A taste for amusements had been introduced on which an earlier generation would have frowned. Thus in Whitefield's time, "mixed dancing was very common in New England." Even the absence of the theatre, on which the law still frowned, was not an unmitigated evil; for a lively French chaplain, who was in Boston near the close of the Revolutionary War, assures us that "piety was not the only motive that brought the American ladies in crowds to the various places of worship. Deprived of all shows and public diversions, the church is the grand theatre where they attend to display their extravagance and finery. There they come dressed off in silks, and overshadowed with a profusion of the finest flowers." With these social innovations were disseminated new modes of thought. There was no avowed antagonism to the past, yet there were not wanting many indications that the sway of old ideas was weakened. The religious revival, which had swept through the churches like a whirlwind, divided the New England clergy into two parties, who already eyed each other with mutual distrust. In the country districts Wigglesworth's "Day of Doom" was, perhaps, "taught with the Catechism," for half a century ago there were many living who could recite from memory the doleful stanzas in which the New England Dante makes reprobate infants argue with the Almighty respecting the difficult question of Adam's federal headship; but in the towns, especially of Eastern Massachu-

setts, the bard whom Mather so much admired was no longer cherished as a "sweet singer." Had not the disputes with the mother country turned the minds of men in a different direction, it is not unlikely that the controversy which rent the New England churches asunder might have been precipitated half a century earlier. But the Stamp Act totally eclipsed the Five Points of Calvinism. Mayhew, of the West Church, the recognized chief of the liberal party after 1761, "threw all the might of his great fame into the scale of his country." Chauncy succeeded him as a leader of popular opinion, and, like Mayhew, turned wholly from theology to politics. Nor in doing this did they turn to an unfamiliar or uncongenial field. The relation originally existing between religion and the state had always disposed the New England clergy to hold political studies in the highest estimate. Refusing to regard human life as separated into two distinct spheres of action, they believed that God could be glorified in the performance of civil duties, and consistently held their town-meetings in the same house in which they paid Him their public vows. Locke and Sidney were hardly less read than Calvin and Owen. In 1766 we find Hollis writing: "More books, especially on government, are going to New England." This marked predilection of the New England clergy for political discussion was also a circumstance which had an important bearing on their fortunes in later years.

Next in numbers to the Congregationalists stood the Baptists, who were supposed to have, at this time, about three hundred and eighty churches. This numerical strength was, however, less real than apparent, since most of these organizations were insignificant in size and influence. The Baptists were not confined to New England, but were scattered through the Colonies, and had become especially numerous in Virginia. The story has often been repeated, that it was from personal observation of the working of a small Baptist church, not far from his residence, that Mr. Jefferson was first impressed with the peculiar advantages of direct democratic government. But notwithstanding their numbers the Baptists, both in New England and the South, were held in great disfavor. Originally bringing to this country a name identified with the worst excesses

of the Reformation, and opposing themselves with conscientious pertinacity to long-established ecclesiastical and political usages, they had been made to feel repeatedly the arm of civil power. In Massachusetts they had succeeded, after a long struggle, in winning a tardy recognition of their claims, but under conditions which had added to their exasperation. The slender importance of the Baptists, as a body, even at the beginning of the Revolution, is plainly enough evinced in the contemptuous treatment which they received at the hands of the Massachusetts delegation to the Continental Congress. Manning, who was one of their leaders, speaks of them as "despised and oppressed." They were even accused of disloyalty to the popular cause. Yet, in spite of all this, they steadily increased. Two distinct causes contributed to this growth. Before all else, the Baptists had insisted on a personal experience of religion as the absolute condition of admission to the Christian Church. But this was precisely the doctrine on which the leaders of the Great Awakening had laid such stress. The great Northampton controversy had turned on this very point. The inevitable effect was not only to direct increased attention to the tenets of the Baptists, but also to carry over to their ranks the numerous congregations of Separatists which had been called into existence by the conservatism of the Congregational churches. Backus, the faithful historian of the Baptists, was one of this description. But, besides this, there was another and perhaps more potent reason. Religious changes are rarely due to the exclusive influence of religious causes. A distinctive characteristic of the Baptists was the energy with which they extolled the gifts of the Spirit, and advocated an unlearned ministry. On this latter point, as we have already seen, the Congregationalists took high ground. Even Edwards, the most powerful promoter of the Revival, would not allow that a man should enter the pulpit "who had had no education at college." Against what seemed to them an unrighteous prejudice in favor of "the original tongues," both Separatists and Baptists strenuously maintained "that every brother that is qualified by God has a right to preach according to the measure of faith." "Lowly preaching" became their favorite watchword, and it marked the beginning of a popular tendency

destined to make itself deeply felt on the religious institutions of New England. The Baptists not only gained a controlling influence with a devout but humble class who had little appetite for the elaborate discussions of the Congregational divines, but they were powerfully helped by the prejudice which exists, in every community, against the exclusiveness of superior culture. The rapid growth of the Baptists was, in large part, a democratic protest; and it is a noticeable fact that even during the war their numbers steadily augmented.

Third in numerical importance was the religious organization at that time known as "The Church of England in the Colonies." Out of New England it included a majority of those whose wealth or social consideration gave them influence in the community. It was the oldest religious body in the Colonies; its impressive liturgy was read at Jamestown seven years before the Pilgrims landed at Plymouth. In all the Southern Colonies it had on its side the support of law, and everywhere out of New England the powerful countenance of official favor. But neither years nor social consideration nor legal support had secured for it a hardy growth. Even in the Colonies where it was most firmly planted, its clergy were dependent for ordination on the mother country, and in New England both for ordination and maintenance. In New England they remained to the last hardly more than missionaries. There existed a wide-spread suspicion that in some way they were rendered subservient to the political designs of the British government. The scheme of erecting an Episcopate over the Colonies contributed, Mr. Adams tells us, as much as any other cause, "to close thinking on the constitutional authority of Parliament." Nor was political prejudice, by any means, the only thing that had impaired its influence. In Maryland and Virginia, where its strength was greatest, the careless lives of the clergy had alienated numbers of those who were sincerely attached to its forms. Before any political antagonisms had been excited, "the Church was becoming more and more unpopular, because it was not considered as promoting piety." Jonathan Boucher, a clergyman of much intelligence, long settled in Virginia, whose sermons throw a clear light both upon the political and religious issues of the period,

frankly confesses that "whatever might be the case with the people of the North, those of the Middle and Southern Provinces were certainly not remarkable for taking much interest in the concerns of religion." After the overthrow of the establishment, a considerable proportion of the Virginia clergy "continued to enjoy the glebes, without performing a single act of sacred duty." It was estimated that at least two thirds of the population of that colony had attached themselves to other religious bodies. The Revolution bore, of necessity, on this church with crushing weight. It was "reduced almost to annihilation"; many despaired "as to the perpetuating of the communion otherwise than in connection with an establishment." When the struggle for independence began, the clergy, with a few notable exceptions, were hostile or lukewarm. Their conduct was conscientious, but it was not the less fatal to their popular influence. At the close of the war many entertained scruples about taking the oath of allegiance required in some of the States, while others declined to conduct public worship on account of their canonical obligation to use the unabridged liturgy of the Church of England. Doubts were even expressed by some of the laity as to the desirableness of retaining the Episcopal office. In Virginia, where there was no prejudice against the ecclesiastical constitution of the church, Patrick Henry had "hurled the hot thunderbolts of his wrath against the tithe-gathering clergy"; in New England, where it stood opposed to local traditions, "the breath of popular sentiment set so strongly against it, that its continuance was almost as precarious as that of a newly transplanted tree amidst the sweepings of the whirlwinds." Even in Pennsylvania, where neither of the influences just referred to operated, Dr. White "was, for some time, the only clergyman."

About equal to the Church of England in number of congregations, though not in clerical force, were the Presbyterians, who did not exist in the Colonies as an organized body till the early part of the eighteenth century. At the epoch of our survey they numbered three hundred churches, their main strength lying in the Middle States. The original members of this communion were almost exclusively of Scotch or Irish-Scotch descent, — a circumstance which has colored their whole

history. Unlike the Congregationalists of New England, with whom at this time they heartily sympathized in theological opinion, they had brought with them to this country a completely developed ecclesiastical polity, for which they had suffered bitter persecution, and to which they clung with the devotion which sacrifice inspires. The Congregationalists, their veins flowing with pure English blood, had boldly struck out new paths; the Presbyterians, with the resolute tenacity characteristic of the Scottish race, clung to the old. The Great Awakening, which shook Congregationalism to its centre, had also for a time divided them, but attachment to a common system soon triumphed over Old Side and New Side differences, and the controversy left no permanent memorial but the famous college which, founded by the radical party, has since become the Ehrenbreitstein of Presbyterian conservatism. The early Presbyterians brought with them profound respect for letters, and they insisted hardly less strenuously than the Congregationalists that the teachers of the people should be themselves well taught. In the ranks of their clergy were men of varied and accurate learning, not a few having been trained in foreign universities. Some were eminent for classical scholarship. If inferior to the New England clergy in aptitude for metaphysical speculation, they were equal, at least, in Biblical learning, and superior in pulpit power. Their eminence as preachers was mainly due to the fact that they were trained to speak without notes, while the New England minister was closely confined to his elaborately written manuscript. Even up to the close of the last century the prejudice against preaching written sermons was still so strong in the Presbyterian church, "that a man's reputation would be ruined should his manuscript be seen." The Presbyterian clergy also cultivated at all times the practice of Scriptural exposition, while in New England reading a chapter of the Bible in public worship was looked upon as a long step in the direction of a liturgy. Dr. Hopkins, who ventured upon the dangerous feat during his ministry in Western Massachusetts, brought on himself a storm of opposition. When the Revolution came, the Presbyterians were stanch advocates of popular rights, and in the Middle States were the main

support of the cause of independence. All their traditions were on the side of resistance to oppression. Among them at this time were numbered those whose fathers had fought in the dikes of Holland and on the bloody fields of France, as well as in Highland glens and behind the walls of Derry. Nothing in their history or temper disposed them to remain silent when a great struggle was going on. Neither in Scotland nor in this country did they hesitate to act according to their convictions. The direction of their political sympathy was shown in the name selected for their college, — Nassau Hall, — and from the presidency of Nassau Hall the accomplished Wither- spoon went to take his seat in the Continental Congress. The Revolution reinforced the Presbyterian church by establishing the republican principle on which the Presbyterian polity was rested.

Of the minor religious bodies existing a century ago less need be said, as they influenced but little the general current of events. Of these the Reformed Dutch, the Lutheran, and the German Reformed were in numbers nearly equal, each having about sixty congregations. But the Reformed Dutch, though long established and highly respectable for the character and learning of its clergy, was almost debarred from growth by its close dependence upon the Church of Holland and its persistent use of the Dutch language in public worship, — a practice kept up in many churches till the beginning of the present century. The Lutheran Church, linked in its origin with memories of Gustavus and Oxenstern, was confined to the German emigration, a large proportion of its clergy having been educated at the University of Halle or at Franke's Orphan-House. The German Reformed, as its name implies, included that part of the German population which refused assent to the Augsburg Confession. In form of government the three were Presbyterian. The small body of Associate Presbyterians, a secession from the Scottish Kirk, should be reckoned in the same family. According to Bishop England's estimate, the whole number of Roman Catholic clergy in the country did not exceed twenty-six, though the congregations were perhaps twice as numerous. The rites of the church were publicly celebrated nowhere but in Philadelphia. A few

gentle Moravians had followed Zinzendorf to the New World, and their communion, Episcopal in government, but Lutheran in doctrine, comprised eight congregations. Methodism had been introduced; but whether by Strawbridge in 1764, or by Embury in 1766, is still disputed. Up to the Revolution, however, the body had no distinct existence in this country; and as soon as hostilities commenced, all the preachers except Asbury hurried back to England. As early as 1770, John Murray, whose curious autobiography should be studied by all who would understand the early history of this country, had begun to preach the doctrine of universal salvation; but as on other points he did not differ from the orthodox creed he was at first admitted to Congregational and even to Episcopal pulpits. The Quakers were still numerous in the colony which Penn had founded, and the great Lisbon earthquake sent to Newport a small but wealthy society of Jews. The summer visitor, strolling through the streets of the "fair seaport town," pauses to gaze at the sepulchral stones carved with strange characters which recall a faith whose hoary traditions make our modern creeds seem but of yesterday.

" Closed are the portals of their Synagogue,
No Psalms of David now the silence break;
No Rabbi reads the ancient Decalogue
In the grand dialect the Prophets spake."

The first impression that we derive from the foregoing facts is that of the diversity of religious belief existing in the Colonies, but a more careful analysis will show that beneath this apparent diversity there was a widely pervading unity. Between the ecclesiastical polity of the Congregationalists and the Baptists there was no essential difference; while the systems of the Presbyterians, the Lutheran, the Dutch Reformed, and the German Reformed were alike in everything but the nomenclature adopted. And between all these, with the exception of the Lutheran, comprising together more than three fourths of all the churches, there existed the most entire harmony of dogmatic faith. That faith, whether embodied in the Assembly's Catechism, the Heidelberg Confession, or the Articles of the Synod of Dort, was the logical and precise system which the Reformer who "pierced to the roots" had knit with hooks of

steel to the sternest hearts of the sixteenth century. It was the faith of John Knox, of William the Silent, and of Admiral Coligny; and could the heroic founder of the ill-fated Huguenot colony in Florida have lifted the veil that hid the two succeeding centuries, and seen the flag of Geneva flying in almost undisputed triumph from the Merrimac to the St. John's, he might have deemed the dark crime of Menendez more than avenged. These churches, too, whether in the parochial autonomy of the Congregationalists or the synodical federation of the Presbyterians, were singularly in harmony with the political movement; and that republican states and republican churches would flourish side by side seemed a conclusion admitting of no doubt. In 1783 the famous Dr. Stiles, the president of Yale College, preached the Election Sermon before the Legislature of Connecticut. His inspiring theme was "The Future Glory of the United States," and, warming to the hazardous role of a prophet, he declared "that when we look forward and see this country increased to forty or fifty millions, while we see all the religious sects increased into respectable bodies, we shall doubtless find the united body of the Congregational and Presbyterian churches making an equal figure with any two of them." Then enumerating the lesser sects, he considerably adds: "There are Westleians, Mennonists, and others, all of which will make a very inconsiderable amount in comparison with those who will give the religious complexion to America." And there was no man living at that time whose opinion on this matter was entitled to more respect.

We have now reached the limit of forty millions, and in the light of the census of 1870 the vaticinations of the learned president well deserve to be regarded as curiosities of literature. The Congregationalists, who in his day were double the size of any other body, now rank as seventh, while the "Westleians," whom he hardly names, stand largely in advance of all the rest. A century ago the more important religious bodies were ranked in the following order: Congregational, Baptist, Church of England, Presbyterian, Lutheran, German Reformed, Dutch Reformed, Roman Catholic. By the census of 1870 they stood: Methodist, Baptist, Presbyterian, Roman Catholic, Christian, Lutheran, Congregational, Protestant Epis-

copal. Tested not as in the foregoing comparison by number of churches, but by number of sittings, the order remains the same for the four larger, but the Congregationalists and Episcopalians would outrank the Lutherans and Christians. Tested again by value of church property, the Roman Catholics come second, and the Episcopalians fifth. Yet far more striking than these relative contrasts is the enormous growth of American Christianity as a whole, a growth which, as the figures clearly show, has more than kept pace with the rapid stride of population. A careful estimate makes the whole number of religious organizations existing in the country at the beginning of the Revolution less than nineteen hundred and fifty. The total population was then estimated at three and a half millions, which would show a church for every seventeen hundred souls. By the recent census, the total number of church organizations is returned at more than seventy-two thousand, which, in a population of thirty-eight millions, would show a church for every five hundred and twenty-nine. In other words, while the population has multiplied eleven-fold, the churches have multiplied nearly thirty-seven fold. The aggregate value of church property cannot be subjected to the same test, since we have no means of estimating the amount a century ago; but in 1870 it reached the considerable sum of three hundred and fifty-four millions. An illustration of the working of the voluntary principle is furnished in the fact that the church which seemed hopelessly shipwrecked by the Revolution, and which, as some of its most sincere supporters thought, had no prospect of existing without the public aid on which it had so long depended, now ranks for its property as fifth in the whole land. A recent Bampton lecturer affirmed that the experiments of voluntarism and dis-establishment, when tried in England under the most favorable circumstances, had proved signal failures. In this country the church of Hooker and Tillotson has certainly shown herself able to go alone. But the most extraordinary increase of ecclesiastical wealth is seen with the Methodists and Roman Catholics, because a century ago they had absolutely nothing. Indeed, the rapid ratio of increase during the last two decades might well attract attention, were it not that this vast amount of property is distributed among so many

different bodies. Such statistics are of course very unsatisfactory tests of the real growth of religion. Even could the precise number of professed Christians be ascertained, we should still be quite as much in the dark. The subtle forces of the invisible world disdain the rules of arithmetic. Yet statistics, after all, afford us the only means of reaching general conclusions; and much as we hear of the decay of faith, and of the growth of religious indifference, it seems certain, from this comparison, that the positive institutions of religion have not, during the last century, lost their hold on the mass of the American people. A more zealous and liberal support has nowhere been accorded to them.

Facts like these lie, however, on the surface, and similar comparisons might be multiplied to any length. It will form a more instructive task to trace the less obvious phenomena of our complex religious life. We have seen that a century ago the speculative faith of the various religious bodies then existing in America was singularly homogeneous. The church organizations that gave tone to American society heartily agreed in accepting the most precise dogmatic system to which Protestantism had given birth. Perhaps no feature of our religious progress is more striking than the wide-spread reaction that has been witnessed, not so much against any particular tenet of the old theology as against the whole dogmatic apprehension of Christianity. How far this reaction has been helped by any change of political sentiment is a curious question, but one not easily answered. Mr. Lecky expresses the opinion that, "if in the sphere of religion the rationalistic doctrine of personal merit and demerit should ever completely supersede the theological doctrine of hereditary merit and demerit, the change will mainly be effected by the triumph of democratic principles in the sphere of politics"; and he might have drawn an illustration of his theory from the fact that the great religious revolt in this country from the exclusiveness of Calvinism was coincident with the great democratic revolt from the conservative politics of the founders of the Republic. If a connection could be established between the two, it would be by no means the first instance of two movements essentially distinct, yet due, in some measure, to the same general causes.

This religious reaction assumed various forms, and was attended with very different results. Its most direct and obvious effect was seen in the rise of new religious sects, but its influence was destined to be powerfully felt in modifying some already existing. One of its earliest fruits was the formation, near the close of the last century, of the "United Brethren in Christ," made up of seceders from the German Reformed and Lutheran bodies, and now numbering nearly fifteen hundred churches. The numerous sect of "Christians," which sprang up simultaneously in three different localities, near the beginning of the present century, and now numbers more than thirty-five hundred churches, was an illustration of the same movement. So was the remarkable "Declaration" of Alexander Campbell in 1807. But by far the most important phase of this reaction is shown in the enormous growth of Methodism. It would argue a most superficial acquaintance with this great movement to define it as essentially a protest; but it is not the less true that in the religious history of this country Methodism represents a profound popular reaction. In this light the rise of this great and influential body must be viewed as the most signal religious fact which the past century presents. When their first conference met at Baltimore in 1784 they collected but sixty preachers, and it was reckoned that in the whole country they could muster but twenty more. Dr. Stiles did them no injustice when he spoke of them in his Election Sermon as "very inconsiderable." They were not only few in number, but poor and unknown; they worshipped in barns, in back streets, and beneath the canopy of heaven. By the census of 1870 they were credited with more than twenty-five thousand parish organizations, and a church property of seventy millions. Their own statistics for the past year give more than twenty-six thousand preachers, and a church property of more than eighty millions. The churches have increased at the rate of two for each secular day throughout the year. They are now by far the most numerous religious organization in the land, and with a zeal and confidence fully proportioned to their strength. A phenomenon so striking cannot be explained but from the operation of some powerful cause. The growth of Methodism may be attributed in part to its wonderful

organization ; yet it would seem that in this country the extremely autocratic character of that organization, while securing it extraordinary efficiency, could not have gained it popular favor. The vital power of Methodism must be sought, not in its form, but in its spirit. It is impossible to account for its rapid growth, save on the hypothesis that it met a great popular want. And it is equally impossible not to recognize the fact that this adaptation lay in the sharp contrast which it presented to the prevailing faith. The immense popular influence of Methodism lay in its bold appeal from "the theology of the intellect" to "the theology of the feelings." Calvinism, throughout all its camps, "lay intrenched in the outworks of the understanding" ; but to souls sated with theological formulas, Methodism, with its direct intuitions of divine truth, came like springs of water in a dry and thirsty land. Wesley rejected all creeds but the simple symbol of the Apostles ; and if his American disciples departed from his example in adopting articles of faith, they conformed to his spirit in making these articles "a simple compendium of the Universal Church, excluding even the peculiar features of the Wesleyan theology." They insisted, always and everywhere, that religious faith is not a logical conviction. Making their appeal at once to man's spiritual nature, laying no stress on nice theological distinctions, they naturally held knowledge of Greek and Latin in light esteem as a qualification for saving souls. Not one of the men who founded Methodism in America, with the single exception of Coke, had received a college education. Asbury, whose influence was incomparably greater than that of Coke, had never enjoyed this advantage. The great feature of early Methodism was its faith in immediate inspiration. Its leaders lived, like Loyola, in a world of ecstatic visions. Not only were they inwardly called of God, but sometimes, like Garrettson, they heard the audible voice of the Spirit. The religious Genius of New England had recognized in love the benign sum of all morality ; but the doctrine which his followers had obscured with the metaphysics of the will, became with the Methodist a burning impulse. The Quaker had exalted the Inner Light, but what with the disciple of Fox had sunk into an inoffensive quietism, with the disciple of Wesley

became the impulse to an unexampled effort. It was estimated that Asbury, during the forty-five years of his untiring ministry, rode a distance that would have taken him twelve times round the earth. When we read the story which one of the early missionaries of Methodism tells of himself, but a story which hundreds, doubtless, might have repeated, "I traversed the mountains and valleys, frequently on foot, with my knapsack on my back, guided by Indian paths in the wilderness where it was not expedient to take a horse; and I had often to wade through morasses half-leg deep in mud and water; frequently satisfying my hunger with a piece of bread and pork from my knapsack, quenching my thirst from a brook, and resting my weary limbs on the leaves of the trees," who does not seem to hear in these words the ring of the verses, "in journeyings often, in perils of waters, in perils in the wilderness, in weariness and painfulness, in hunger and thirst"; and who can doubt that the causes which gave Methodism its early success were the same that first carried the gospel to Damascus, to Antioch, to Corinth, and to Cæsar's palace? As Methodism has exchanged weakness for strength, and poverty for wealth, its outward aspect has greatly altered; the plain meeting-house has become the highly decorated church; the unlettered preacher has learned to emulate the culture which he once held so cheap; colleges and theological schools have been generously endowed, and a powerful periodical press discusses with dignity and erudition doctrines which once struggled for utterance from burning tongues; yet neither learning nor culture were the weapons with which Methodism achieved its early triumphs, and which caused it, in the striking words carved on Philip Embury's tomb, "to beautify the earth with salvation."

At first glance it may seem that the growth of the Baptist denomination, which now ranks as second in the land in point of numbers, contradicts what has been advanced, since the Baptists, in the usual acceptation of that name, are a Calvinistic body. But while it is true that this body, as a whole, accept the modified Calvinism of Andrew Fuller, yet it is not the less true that their distinctive tenet involves a logical denial of that "doctrine of hereditary merit and demerit"

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which lies at the base of the Calvinistic scheme. Every speculative objection to infant baptism was equally an argument against the realistic conception which pervaded the old theology. As a natural result of this attitude no characteristic of the Baptists has been more marked than their contempt for all the historical statements of Christianity. They have made their appeal to Scripture as the sole authority. This indeed is defined by their most eminent American representative as their "fundamental principle"; and to this principle, through all their history, they have steadfastly adhered. The much-vaunted maxim, "The Bible and the Bible only," has found with them its most consistent advocates. Like the Methodists, they have undergone, in the course of a century, a great change in external features. Renouncing their preference for "lowly preaching," they have become zealous promoters of ministerial education; among their divines are men whose names are ornaments of American scholarship, but it is a noticeable fact that their valuable contributions to religious literature have all been in the line of Biblical exegesis; to speculative theology they have made no important addition. Nor can it be doubted that their great popular success is due to the concrete simplicity of their creed, coupled with their extremely democratic polity. And whatever their technical theological position, their whole denominational strain has been in the direction of revolt from antiquity, tradition, and church authority.

But the boldest renunciation of dogmatic faith was witnessed among the descendants of the Puritans. This outbreak had two phases. The restrained and scholarly Arminianism which made its appearance first, appealed to Scripture from human creeds; yet in its philosophical method and formal conceptions of religious truth it did not differ from the Calvinism to which it stood opposed. Both accepted Locke, whose system sapped the foundations of the old theology. The real revolt was the rise of the Transcendental school, which threw all external authority to the winds, and owned no guide but the spiritual intuitions. The "Address to the Divinity School" was the veritable proclamation of a new gospel, a gospel which indeed "ravished the souls" of the elect, but proved too subtle and ethereal to become "bread of life to millions." This ambrosial

food was transmuted into homelier diet by Mr. Parker, and has served to furnish the board of the later Free Religionists.

In resisting the Unitarians the more numerous section of the Congregationalists were betrayed into a position which their own traditions did not justify, and the way to the Lord's table was fenced with "sound forms of words." But various influences soon began to work in an opposite direction. The Evangelical revival, by laying as it did such stress on emotional experience, weakened the hold of objective truth. The great impulse given at Andover to Biblical study, under the inspiring lead of Stuart, disclosed the weakness of the old exegesis, and introduced the more comprehensive methods of German criticism. And a small, but thoughtful and cultivated section, deriving from Coleridge the fruitful maxim that "Christianity is not a theory or speculation, but a living process," rallied the Transcendental philosophy to the support of Christian faith. Thus the orthodox mind of New England was gradually loosed from its old moorings. The change was shown less in direct antagonism to any specific doctrine than in silent modification of mental habits. What had been betokened by more than one significant sign was at last brought clearly to light in the Congregational Council convened at Boston in 1865, an assembly which justly attracted attention for its intelligence and dignity. At this convention an attempt was made to agree upon some doctrinal basis for the denomination; but after earnest discussion the utmost that could be accomplished was to "affirm substantially" the Confessions of 1648 and 1680, in face of the declaration made by a leading member of the body that "there is language in every one of these old standards which not a man upon this floor receives." Many preferred a declaration "according to the fresh language of the present time," but the committee to whom the matter was referred declined to present one, for the reason "that it could not be harmoniously adopted." And in taking their action it was expressly understood that the council affirmed those venerable formulas "only in a qualified manner." A "compromise document" was subsequently adopted by the council, with much solemnity, at Plymouth. But so rapid was the march of opinion that at the Oberlin Council, held only six years later, the

declaration adopted at Plymouth was discarded on the ground of "committing the denomination to old and minute confessions"; and a new one was adopted, "being in substance the great doctrines of the Christian faith," of which the odd remark was made that it "did not perfectly express the exact wishes of any party." Of this council a very high authority declared, "It may truly and frankly be called a new departure." This new departure consisted in the fact that, without disowning old confessions, it "refused to make them tests of fellowship." Accordingly the council received as full members the Kentucky delegates, who distinctly explained that "their churches were organized on the evangelical basis, ignoring all distinction between Calvinist and Arminian." "There can be no doubt," wrote a prominent member of the council, "that the progress of Congregationalism has been greatly retarded by the former limitation of its denominational fellowship to Calvinistic ministers and churches." Here is a distinct repudiation of the position asserted with so much earnestness sixty years before.

It is a characteristic of American religious life, compounded as it is of such various elements, that it presents many diverse phenomena; and we should run the risk of very imperfect generalization if any one class were made too prominent. Coupled with this marked reaction against a dogmatic apprehension of religion, there has been a tendency equally marked and equally important in an opposite direction, — a tendency that does not any less deserve to be regarded as a representative movement in our religious history. In all countries where a connection between church and state is recognized, whether Catholic or Protestant, the ecclesiastical power is subject to important limitation, for the permanent contact of the spiritual and temporal authority requires that the sphere of either should be precisely marked. This rule holds as well in Portugal as it holds in Prussia. Thus when the relations of the two are not inimical, the free action of the church is fettered. Hence in this country, where for the first time since Constantine the religious element has been left absolutely without restraint, conditions of ecclesiastical development have been supplied such as exist nowhere else in Christendom.

Each religious organization has been allowed free scope to unfold according to its own interior law, and solve after its own way its distinctive ecclesiastical problem. The result has been a quickening of ecclesiastical activity, and an impulse to ecclesiastical development, which already constitutes a significant feature of our history, and promises to revive questions which were supposed to have been forever settled. Here, again, an interesting question presents itself, the question whether any connection can be traced between this tendency to strong religious organizations and the general laxity in our political ideas. It is certain that the ecclesiastical life of the Middle Age was greatly stimulated by the prevailing political anarchy, and it seems not unlikely that the increasing fluctuation of our own political life may have disposed some to look with more favor upon stable ecclesiastical forms. But whatever may be the occult cause of the phenomenon, its existence is beyond question. It is a common impression that the prevailing impulse of American religion is to split up into an endless variety of sects. "How can I live in a country," Dr. Döllinger is reported to have said, "where they found a new church every day?" But nothing appears more certain, from a review of our religious history, than the gradual working of a tendency in precisely the opposite direction. The multiplicity of sects is, indeed, a patent fact, and in a land where expression of opinion on all subjects is unrestrained, and where combination for every purpose is allowed, such a result is not surprising; but most of the petty organizations that go to swell the portentous aggregate are but ripples on the surface of the stream, appearing for a moment and then vanishing forever. In their most repulsive forms they are mere social excrescences, deriving their morbid growth mainly from foreign sources. The most characteristic fact of our religious history, as the census clearly shows, is not the tendency of American Christianity to split up into a multiplicity of sects, but its disposition to aggregate itself under a few great denominational types. This conservative preference of the vast majority for stable ecclesiastical order is a leading and unmistakable distinction of our religious life. Whatever may have been the tendency at an earlier period, at the present time it is undeniably in this direction.

We have already noticed that the religious organizations which were transplanted to this country seemed, under the inspiration of our institutions, to acquire new energy. This result was witnessed with the Methodists, who, in England, during Wesley's life, had clung to the skirts of the Establishment, but here boldly organized a complete church, and proceeded to the institution of bishops. The success of the Methodists was due hardly less to their autocratic discipline than to their burning zeal. And it should be observed that it is the recognized value of the system which has commended it to popular regard. But a more important illustration of the same principle is presented in the Presbyterian church. The history of this influential body, which now ranks as third in the country, is especially instructive, for the reason that its uniform and healthy growth is not connected, as is that of the Methodists, with exceptional phenomena, but is the evident result of the persistent and intelligent administration of an admirable polity. In the face of the proudest monarchy of Europe, it had proclaimed its capacity of self-direction, and in the new field which this country opened it was not backward in asserting a logical development. No sooner was the Revolution ended, than the Presbyterians took the first steps towards a complete organization; and before the Federal government had gone into operation, the constitution of the church was adopted as it now stands. From the outset it assumed the character of a missionary church, and in the earliest General Assembly a plan was adopted for promoting the evangelization of the West; and in the most gloomy period of our religious history, the closing decade of the last century, when the wide diffusion of French Revolutionary maxims "threatened the dissolution of religious society," the growth of the Presbyterian church was uniform and rapid. Nothing is so characteristic of this church as the resolution with which it has adhered to its theological and its ecclesiastical traditions. Amid the great movements of modern thought, it has stood unflinchingly to its Confession, and in the great crises of its history been thoroughly consistent with itself. When the West was frenzied with religious excitement, rather than relax its requirements for the ministry, she

submitted to the great Cumberland secession of 1810, preferring well-trying method to mere numerical increase; and when, in consequence of the famous "Plan of Union," it found itself invaded with New England usages and New England ideas, it preferred the excision of nearly half its members rather than not purge itself of the foreign element. Whatever successes it has gained have not been gained by denying its principles, or by making terms with its opponents. The steady growth of this powerful communion, in the face of its uncompromising assertion of a rigid dogmatic system, furnishes a striking illustration of the decided preference of a most intelligent section of the American people for a vigorous and well-administered ecclesiastical system. The Reunion of 1871, when, after a separation of more than thirty years, the two branches of the Presbyterian church were once more happily united, whether considered in its immediate or its ultimate consequences, is second in importance to no recent event of our religious history. It fixed universal attention as showing that the tide had turned, and that the weary period of discord and secession was to give way to a new period of union and consolidation. There seems no good reason why other Presbyterian bodies should not follow the example.

This marked preference of the majority of our people for well-ordered system may be still more conclusively shown from contrasting the progress of the Congregational and Presbyterian bodies. A century ago the Congregationalists were by far the more numerous and influential. The two were in close sympathy, and Congregational delegates were allowed to sit and vote in the General Assembly. Both cordially united in the "Plan of Union" for combined missionary operations at the West; but it was found that whenever the stronger organization came into contact with the weaker, the weaker was uniformly swallowed up, and the result was an immense loss of strength to the Congregational communion.

It would, however, be an error to represent that the change in the relative strength of the Presbyterians and Congregationalists was due wholly to difference of polity. Other causes contributed to weaken Congregationalism in its own seats. The proclivity of the Congregational clergy for political dis-

cussion, so conspicuous in the period preceding the Revolution, was hardly less marked during the stormy times that preluded the memorable "Civil Revolution of Eighteen Hundred." Almost to a man the Congregational clergy of New England were on the Federal side. The biographer of Mr. Jefferson complains with bitterness that the ministers were all for Hamilton. As an inevitable result, the Democratic triumph swept from the New England parishes all whose sympathies were pledged to the victorious faction, and considerable numerical strength, if not much piety, was carried over to rival congregations. But the fatal wound was inflicted upon New England Congregationalism, not by an enemy, but by its own hand. The doctrinal antagonism which the Revolution for a time had smothered blazed up at the publication of Belsham's *Life of Lindsey*; and when Channing preached his famous sermon at Baltimore, the divorce between the main body of Congregationalists and their oldest traditions and finest culture was complete. Henceforth the New England Israel, that had come out of Egypt so gloriously, pursued two separate paths, and presented the unedifying spectacle of a house divided against itself.

This impulse of our leading religious bodies to a complete logical development has naturally led to a sharper accentuation of ecclesiastical distinctions. The Protestant Episcopal Church furnishes a striking illustration of this tendency. Attaining its complete organization in 1789, when White and Provost were consecrated at Lambeth Palace, during its early years it reflected the moderate temper of the English Church of the last century. Its leading characteristic was eminent respectability; its preaching had the mild accent of that apologetic period when, as Johnson put it, the Apostles were tried regularly once a week on charge of committing forgery. Bishop White, whose unswerving support of the cause of independence showed that he was lacking in no manly element, as a preacher was "dignified without animation," and "much esteemed for solid and judicious instruction." Bishop Jarvis was noted for an "unusually slow and deliberate pronunciation," a characteristic not suggestive of excessive fervor. The amiable Madison "at all periods of his life was much addicted

to scientific studies." The early style of Bishop Griswold, "like that which generally prevailed in the church at the time, was rather moral than evangelical." Though the church derived its ecclesiastical legitimacy from England, and made the Anglican Church so far as possible its model, yet the altered conditions of society necessitated some not unimportant changes. Though the American bishops retained the name and ecclesiastical functions, they lacked the civil rank and ample revenues which conferred so much additional lustre on the English prelates; and the absence of patronage threw increased power into the hands of the parishes. But the most important constitutional change was one carried through by the influence of Bishop White, which introduced the novel principle of lay representation. In consequence of these modifications, the "Protestant Episcopal Church" corresponded nearly, if not exactly, with the model which Baxter declared would suit himself and the more moderate Presbyterians. Nothing could be more marked than the mildness with which the claims of the new church were asserted. The popular prejudice which still lingered against the office of bishop, and "the fashion of objecting to it prevailing even among a considerable proportion" of the church, led to a cautious definition of Episcopal titles. The Convention of Maryland, in 1783, recognized "other Christian churches under the American Revolution." The Virginia Convention, two years later, while expressing a decided preference for uniformity in doctrine and worship, declared that this should be pursued "with liberality and moderation." Where the church, before the Revolution, had been established by law, its tone was uniformly most conciliatory; where, on the contrary, it had been in opposition, its tone was most pronounced. The staunchest Churchmen were in Connecticut. When Griswold moved from Connecticut to Rhode Island, sermons which had been preached with applause in the former State were received with "great disfavor" by Episcopalians in Providence and Newport. Coke's friendly overture to Bishop White, proposing a union of the Episcopalians with the Methodists, drew from the latter the reply "that he did not think the difficulties insuperable, provided there was a conciliatory disposition on both sides." The first evi-

dence of a change of tone was the publication, in 1804, of Hobart's "Companion to the Altar," in which, not the nature of the sacraments, but the "lawful authority" by which they might be administered was discussed. This provoked the memorable controversy with Dr. Mason, in which the distinctive claims of the Episcopal Church were for the first time publicly set forth. These were further asserted in Hobart's "Apology for Apostolic Order," published in 1807. The eminent personal qualities of Hobart marked him for a party leader, and his elevation to the Episcopate, a little later, proved a signal epoch in the history of the church. In a Pastoral Letter of 1815 he took strong grounds against co-operation with other Christians in promoting religious objects, and, in defiance of a growing sentiment represented in the formation of the American Bible Society, he boldly declared "that all the differences among Christians are on points subordinate and non-essential is an unfounded assertion." For a time these views found a weighty counterpoise in the Evangelical party, but, by degrees, what was first described as "bold and startling" came to be accepted maxims, and by the action of the Convention of 1844 the church was placed conclusively upon Hobart's ground. And the decided growth of the Episcopal Church dates from the period when it clearly enunciated its distinctive theory. The later controversies which have disturbed its peace have not touched this principle, and those who differ most widely on questions which the Tractarian and Ritualist have raised are heartily agreed upon what constitutes the "Church of the true Order."

The tendency so clearly revealed of American Christianity to aggregate itself in a few great denominational families, strenuously affirming theological or ecclesiastical tenets that are mutually exclusive, deserves special attention in its bearing upon the prospective development of a truly catholic type of Christianity. It might have been supposed that the contact, upon a perfectly equal footing, of so many Christian bodies, each zealously asserting its distinctive faith, would have provoked such mutual comparison as would gradually have brought into clear relief the essential truths which all were agreed in recognizing. Professing to receive the same Gospel,

it might have seemed that somewhere there must have existed substantial harmony; but no such result has followed. It is amazing to note how slight has been the reciprocal influence which these bodies have exerted. They seem to have pursued their separate paths, coming into contact with each other's opinions only to controvert them. With individuals, of course, changes of opinion have been frequent; but so far as concerns the formal affirmations of the leading religious bodies, with the sole exception of the Congregationalists, there has not been the slightest change. With most of these bodies no modification has been thought of; in one or two cases, where the relaxation of some distinctive denominational feature has been suggested, it has drawn forth a storm of indignation. The irreligious world has laughed at the spectacle of an eminent philanthropist actually brought to trial on the atrocious charge of singing hymns with Christians of another name. It is evident that our leading religious organizations have done nothing in the way of promoting any external Christian unity. There are many to whom this state of things is not repugnant, who defend the "denominational" type of Christianity as the natural efflorescence of the Reformation, and rest content with it as the ultimate achievement of Protestant Christianity. On the other hand, there have been some who have protested against "the 'evangelical' heresy that the normal state of the Church universal is a state of schism." From many quarters have come eloquent expressions of the conviction that the sectarian system, however much it may stimulate zeal, does not furnish the conditions of the finest and noblest Christian culture. But no adequate remedy has thus far been proposed, and American Christianity seems hopelessly committed to the denominational experiment.

This drift of American religious sentiment towards the formation of compact and powerful religious organizations not only affects the relations of these bodies to one another, it is already presenting novel and difficult problems in relation to the civil power. To comprehend fully the most important of these, it must be remembered that for many years two antagonistic opinions have been developing themselves with respect to the functions of political society. On the one hand the maxim

has been steadily gaining ground, that these functions are purely secular, and in consequence the formal relations between religion and the state have been everywhere annulled. But on the other hand there has been a tendency as marked on the part of the civil power to invade the spiritual province by undertaking the support and control of education. For it will hardly be denied that even in its rudimentary forms education touches the springs of spiritual life. Precisely at this point the Roman Catholic Church emerges into significance as an element in our complex ecclesiastical equation.

The growth of the Roman Catholic Church, which according to the census now ranks as fourth in order reckoning by number of parishes, but second if church property be made the test, has been viewed by some with grave apprehension, though, as it would seem, on insufficient grounds. This great numerical increase can be accounted for by our enormous foreign emigration. It has been doubted even whether the increase has kept pace with the emigration, and whether the church has not actually lost in strength by the transplanting of so many of its members to the New World. There seems to be no way of arriving at any precise estimate of the Roman Catholic population; but if the ratio of increase has outstripped the aggregate gain of the nation, the same would equally hold of the larger Protestant bodies. The fact that the members of this communion are mostly congregated in great centres, gives them an exceptional local influence, and exaggerates the popular notion of their actual power. Less fettered by the civil authority than in any other portion of Christendom, they have shown a most intelligent appreciation of the possibilities of their position, and in zeal for ecclesiastical development have certainly been surpassed by none of the Protestant bodies about them. And when we contrast their condition at the Revolution, shut out from political functions in nearly every colony, and celebrating their attenuated rites in a single city, with their present liberty and splendor, it is not surprising that the more enthusiastic among them have learned to look on this country as a Land of Promise. By none among us has the full significance of our political experiment been more intelligently grasped than by the members of this communion. For many

years the Roman Catholic Church held itself aloof from American society. Deriving its increase from a foreign element, owing allegiance to a foreign head, caring nothing for the controversies that racked the various Protestant bodies, its presence was felt only in an occasional debate. It urged no exclusive claims. The acquisition of territory from Catholic states added to its importance, but it was the impulse of self-development that first brought it into conflict with American society. To insure that development nothing was more essential than that the church should control the education of its young; and strong at length in consciousness of wealth and numbers, it boldly threw down its first gage, in 1840, by demanding the removal of the Bible from common schools.

Had this controversy turned simply on the reading of a few verses of King James's version at the opening of the daily exercises, it need have caused no intelligent Protestant embarrassment. Simple justice would have dictated a concession involving neither disrespect to the Almighty nor peril to the spiritual welfare of the child. But the difficulty lay deeper; the real grievance of the Catholic was, not that too much, but that too little religious instruction was given in the schools; he dreaded an education from which all positive religious influence had been eliminated; he rejected, in other words, the whole theory on which the public-school system had been based. The attitude which he assumed furnishes an interesting illustration of our religious changes, since in asserting so emphatically the indissoluble connection of religion and education he occupied precisely the ground of the Puritans of Massachusetts and Connecticut, who gave the whole system of public education in this country its first great impulse. With them the spelling-book and catechism always went together. Furthermore, in the remedy which the Catholic proposed, of proportioning the annual amount raised for school purposes among the various religious bodies, he recalled the identical arrangement adopted in Massachusetts to meet a similar dilemma in providing for the support, by law, of public worship.

While it is a wholly gratuitous assumption that the Catholics in their persistent warfare against public schools have been actuated by any covert hostility to those political institutions

which have secured them such unparalleled advantages, especially in view of the fact that the most vehement denouncers of the system of mixed education are among the most enthusiastic and discriminating advocates of our civil polity, it is nevertheless true that by the Papal Encyclical of 1864, which brands "the system of instructing youth which consists in separating it from the Catholic faith, and from the power of the church, and in teaching exclusively, or at least primarily, the knowledge of natural things, and the earthly ends of society alone," as a thing *reprobata, proscripta atque damnata*, the Roman Catholic Church in the United States is irrevocably committed to conflict with a part of our public system which, by the great majority of our people, is regarded as absolutely essential to the perpetuity of our free institutions. This question has been looked at so exclusively from a partisan standpoint, and has been so overwhelmingly decided by popular opinion, that its ulterior bearings have hardly received enough attention. But a cursory glance will show that the problem of the relation of religious and political society is less simple than our politicians half a century ago supposed. If the popular opinion be well grounded, that the temporal and spiritual authorities occupy two wholly distinct provinces, and that to one of these civil government should be exclusively shut up, a position in which the disciple of Mr. Jefferson and the liberal Catholic who seeks to reconcile the doctrines of his church with modern liberty are perfectly at one, it would be difficult to make out a logical defence of our present system of public education. If, on the contrary, it be the right and duty of the state to enforce the support of public education from a class of the population conscientiously debarred from sharing its advantages, then our current theory respecting the nature and functions of the state stands in need of considerable revision.

The theory of the absolute separation of church and state has given rise to another question. The rapid accumulation of ecclesiastical wealth is a fact that could not fail to arrest attention. By the immemorial traditions of all Christian countries, such property has been exempted from taxation. When the Church was a public institution, and when the

benefit of its ministrations was freely open to rich and poor alike, a sufficient reason existed for such exemption. But, it is argued, the effect of our voluntary system has been to render the modern Protestant church little more than a religious club, where Christians in easy circumstances, by paying an annual assessment, may listen once a week to reasonably good music, and to such preaching as it pleases the Lord to send. The portion of the population debarred by pecuniary inability from enjoying this soothing Sunday relaxation is not inconsiderable; a still larger number decline to attend for other reasons. The enormous increase of our public burdens, directing as it has increased attention to the principles on which equitable taxation should be adjusted, has raised the question whether those who derive no benefit from public worship should be indirectly taxed for its support. That exemption is such indirect support, and that so far it tends to throw an additional burden upon other property, there needs no argument to show. It only differs from direct support in furnishing the most liberal assistance to those who need it least. And conceding the general benefits that accrue to society from the positive institutions of religion, the question still remains, Why should a "purely political organism" give even an indirect support to religious worship?

The manner in which this subject has been handled affords striking evidence of the confused and unsettled state of public opinion with reference to the relations of the spiritual and temporal power. Mr. Brownson claims that neither in politics nor in religion is it the destiny of the United States to realize any theory whatever. What the future may have in store for us it would be beyond the scope of this paper to predict, but a review of our past history should incline us to place a modest estimate on our success.

"Time doth transfix the flourish set on youth."

He certainly would be a very bold or a very thoughtless man, who would venture to affirm that the ideal of catholic unity has been reached in our system of "strenuously competing sects," or that the problem of church and state has received a final solution in remitting public worship to voluntary sup-

port. At the close of a century we seem to have made no advance whatever in harmonizing the relations of religious sects among themselves, or in defining their common relation to the civil power. The Evangelical Alliance was an interesting expression of individual sentiment; but in proclaiming so energetically that the differences of religious sects were non-essential, it cut away the limb on which its whole fabric rested.

There are phases of religious culture not touched in the foregoing survey which also furnish marked and significant tests of religious progress. A century ago the religious culture of this country was theological. The intellectual strain was in one direction, to solve the solemn problems arising from man's relations to his Maker. Every thoughtful mind was haunted with a sense of the divine order of the world; for however weakened the social sway of Puritanism, it had hardly relaxed its tremendous grasp upon the spiritual nature. The system of doctrine almost universally accepted enforced deliberate conclusions respecting mysteries into which angels might shrink from looking. To these problems the acute and venturesome New England intellect was stimulated by the prevailing methods of intellectual discipline. At Yale College, a century ago, logic held the highest place; and from the school where Burgerdicius, Ramus, Crakenthorp, and Keckerman were "the great lights" came the leaders in the most distinctively original and vigorous school of American religious thought. Of this school Samuel Hopkins was the foremost representative. A typical New England thinker, a sincere and noble character, he deserves the veneration that is never withheld from masculine independence and transparent honesty. The elder New England divines were disciples of the Reformation, not of the Renaissance; they were more concerned for accuracy of statement than for polished diction. The qualities which have caused the Ecclesiastical Polity and the Provincial Letters to outlive all controversy, their writings did not share. As a consequence these writings have hardly more influence to-day on the cultivated intellect of New England than the writings of the schoolmen. Their very phrases have lost all meaning to the men of this generation. This makes it less

difficult to do justice to their real merit. While the wider culture in our time condemns their intellectual range as narrow, and their philosophical method as defective, yet we can never mention but with respect a school of thinkers who so seriously grasped the great problems of existence, and who, withal, dealt so honestly with themselves in the solutions which they attempted; who may have erred in not accurately measuring the limits of human thought, but who neither ignored difficulties nor paltered with terms; who had "no sophistry in their mouths, and no masks on their faces."

Whether it be understood as a eulogium or a reproach, it is nevertheless a fact that the original impulses of religious thought in this country have proceeded almost wholly from New England. And throughout all our history no more genuine intellectual force has been expended than was devoted to theological discussion by the school that began with Hopkins and closed with Taylor. Yet these acute and powerful thinkers have had but little influence on other religious bodies. With most of them they have never come in contact, and where, as in one memorable instance, they seemed to effect a lodgement, it was only at last to be rejected and disowned. Nor even in New England have they retained their sway. They were profoundly metaphysical; recent theology has become historical and critical. It has gained in breadth, but lost in intellectual force; it is more learned, but less original. A striking illustration of the degree to which the theological intellect of New England has lost its relish for metaphysical inquiries is furnished in the fact that the most acute vindication of the freedom of the mind in willing, which our generation has produced, is the work, not of a divine, but of one who snatched from an engrossing business career the opportunities of literary labor.

The second great phase of our religious culture was ethical, and it need hardly be added that its representative was Channing. In terming the first epoch metaphysical it should not be forgotten that Hopkins denounced slavery when slaves were still landed on the wharves of Newport; and in terming the second ethical, we would by no means depreciate the eminent intellectual qualities of some of its early leaders. But it is

not less true that when the movement, which is so imperfectly described by the theological term commonly employed to designate it, passed from its negative to its positive stage, its note was ethical. The inspiration of Channing lay in his noble "enthusiasm of humanity." As a scientific theologian he cut no deep lines on our religious thought; but as an apostle of that benignant Gospel which seeks in the welfare of man the highest glory of God, he must be reckoned a star of the first magnitude in our spiritual firmament. His true and abiding influence overruns the boundaries of sects. He was the foremost and most eloquent propagator of that humanitarian sentiment which pervades so widely our modern life. The force of this sentiment has been by no means expended in specific philanthropies and moral reforms. While it has made itself felt most decisively in these directions, it has also silently reacted in quarters where its influence has been least suspected. The tone of every Christian communion has been affected by it. It has widened the range of religious effort, modified the emphasis of preaching, and even tinged perceptibly the impulses of missionary zeal. The unmistakable change that has come over American Christianity in the disposition to assign so much greater relative importance to practical well-doing, and to recognize the relations of the Gospel to the present life, is due, in very large measure, to this more open vision of "the godlike in the human." The wider diffusion of this humane philosophy has been promoted by an exceptional literary excellence. The qualities in which the theological culture of the former epoch was so conspicuously deficient became the distinctive characteristic of the second phase. Still, its success has been more evident in the discussion of social questions than in solving "problems of the soul."

The most recent phase of our religious culture, and one that can hardly yet be studied in its full development, is the tendency, so marked at the present time among all religious bodies, which assigns to sentiment a more prominent function in religion. In its most general aspect, this is part of that great reaction against a logical apprehension of Christianity which we have before considered, and is the result of social development and of a more diversified civilization. It may be termed

the æsthetic phase, although it should be remembered that this tendency even in its most pronounced forms seldom usurps exclusive control, being found not unfrequently allied with an efficient recognition of practical religious duties. This æsthetical revival is, without doubt, the characteristic feature of our religious culture at the present day. Were it no more than an æsthetical revival it would scarcely deserve notice in a review of religious progress; but in its most extreme manifestations it has an avowed connection with doctrine; and where no such connection consciously exists, the tendency can hardly be dissociated from subtle modifications of religious thought. The illustrations of this present phase of our religious culture are too familiar to need more than the most passing mention. They are seen in the general disposition to affect a more elaborate religious ceremonial, and in the extraordinary impulse given to ecclesiastical architecture. That these results should be witnessed in religious communions which have always recognized symbolism and ceremonial as legitimate instruments of religious culture is not surprising, for, even if carried at times to an extreme, the development is logical. It works out a principle which has never been denied. Yet even in these communions the transformation is very marked. Things undreamed of even in Hobart's time have long ceased to attract attention. The first stained windows were brought to this country in 1827, and in the same year we find Doane urging the restoration of the cross to churches. Not till twelve years later did this leader in ecclesiological reform venture to suggest the propriety "of removing the holy table back, and setting it up a step or two upon a platform." At that day a surpliced choir would have excited consternation. But the most conclusive evidence of the wide diffusion of this æsthetic impulse is furnished in those religious bodies with all whose traditions it is at war. The tendency pervades all sects, and mediæval architecture is no longer, as it once was, a matter of principle, but simply a question of expense. The Baptist and the Methodist have learned to covet the "dim religious light" and the "pealing organ"; and the children of those whose early history was a stern protest against the perilous alliance of faith with any sensuous forms, and who refused, in their plain meeting-

houses, to tolerate so much as the stated reading of the sacred volume lest a spiritual worship should degenerate into a formal service, have come to listen with composure,

“under vaulted roofs

Of plaster, painted like an Indian squaw,”

to such artistic “renderings” of Holy Writ as awaken a bewildered doubt whether Hebrew or Greek or Latin be the tongue employed. Whatever the defects of religious teaching a century ago, it was certainly a vigorous intellectual discipline. It is not easy to believe that the substitution of such different methods is a sign simply of a more cultivated taste.

From the foregoing review it has been made sufficiently apparent that the function of American Christianity has been discharged in a moral and practical rather than in a scientific and theological development. The scope of this article does not permit a survey of our copious religious literature, but such a survey would undoubtedly establish the same conclusion. The impulse of original religious thought was almost wholly limited to a single school. As speculative has been succeeded by biblical and historical theology, we have drawn our best supplies from a foreign source. Each of our larger denominations is amply furnished with its representative literature, but no supreme mind has appeared whom all acknowledge as master. It may be doubted whether denominational training is conducive to such a result. Our most successful efforts have lain in the more popular discussion of religious truth, a direction in which our literature has been enriched with more than one admirable monograph. At the close of the first century of its independent existence, Christianity in this country, with an undeniable external growth and a prodigious external activity, finds itself confronted with great and perplexing problems. Some of these, as the question how under our voluntary system the Gospel shall be preached to the poor, are incidental to the peculiar conditions of our American religious life; while others, as the issue between Christianity and science, are connected with the general movement of modern civilization. There are not wanting many indications of a disposition on the part of those who hold earnestly to Christianity as a great historical fact to look these questions fairly in the face; but whether, in

attempting to solve them, we shall simply repeat the experiments of the Old World, or, rising to nobler modes, shall illustrate some deeper adaptation of the Gospel to human society and to human thought, it remains for the coming century to show.

J. L. DIMAN.

ART. II.—POLITICS IN AMERICA, 1776-1876.

WHEN the Continental Congress met in 1774, few persons in the Colonies perceived that the ties to the mother country were about to be severed, and few, if any, were republicans in theory, or contemplated a "revolution" in the political system. The desire for independence was developed during 1775, and the question as to the form of government to be adopted came up by consequence. It presented no real difficulty. The political organization of some of the Colonies was such already that there were no signs of dependence except the arms and flag, the form of writs, and a responsibility to the Lords of Trade which sat very lightly upon them. Necessary changes being made in these respects, those Colonies stood as complete republics. The others conformed to this model.

In bringing about these changes great interest was developed in political speculations, an interest which found its first direction from Paine's "Common Sense," and was sustained by diligent reading of Burgh's "Political Disquisitions," and Mrs. Macaulay's "History of England." The same speculations continued to be favorite subjects of discussion for twenty-five years afterwards. The journals of the time were largely made up of long essays by writers with fanciful *noms de plume*, who discussed no simple matters of detail, but the fundamental principles of politics and government. The method of treatment was not historical, unless we must except crude and erroneous generalizations on classical history, and it seemed to be believed that the colonial history of this country was especially unfit to furnish guidance for the subsequent period; but the disquisitions in question pursued an *a priori* method, starting from the broadest and most abstract assumptions. The same method

has marked American political philosophy, so far as there has been any such thing, ever since. It is very much easier than the method which requires a laborious study of history.

The natural effect of the war, but still more of the doctrines in regard to liberty taught by Paine, and of the deplorable policy of local terrorism pursued by the Committees of Safety against Tories and Refugees, was to produce and bring into prominence a class of active shallow men, who felt their new powers and privileges, but not the responsibility which ought to go with these. The old colonial bureaucracy, which had enjoyed all the social pre-eminence which colonial life permitted, was gone. Office was open to many who, before the war, had little chance of attaining it. They sought it eagerly, expecting to enjoy the social advantages they had formerly envied. In the Northern States a class of eager office-seekers arose who gained a great influence, saw their arena in the States especially, and jealously opposed the power of the Confederation. This class made hatred to England almost a religion, and testified to their political virtues by persecuting Tories and Refugees. They found popular grievances also ready to their hand as a means of advancement. The mass of the people had been impoverished by the war. The attempts at commercial war had reacted upon the nation with great severity. The paper issues of the Congress and the States had wrought their work to derange values, violate contracts, inflate credit, and destroy confidence. On the return of peace the industries which had been sustained only by war ceased to be profitable, the reduction of prices spread general ruin, and left thousands indebted and impoverished. The consequence was discontent and disorder. All this was heightened by the contrast with another class which had been enriched by privateering, contracts, and "financiering." The soldier who returned in rags, bringing only a few bits of scrip worth fifteen or twenty cents on the dollar, found his family in want, and some of his neighbors, who had borne few of the sacrifices of the war, enriched by it, and now enjoying its fruits. It seemed to this whole class that they had not yet got liberty, or that they did not know what it was. They did not look for it to a closer union.

This party, for it soon became a party, found an alliance in

a quarter where it would hardly have been expected, in the slave-owning planters of the South,—an alliance which has been of immense importance in our political history. The planters, at the outbreak of the war, had been heavily indebted to English capitalists and merchants. They now feared that they would be compelled to pay their debts, and they saw in the treaty-making power of the general government the source from which this compulsion would come. They therefore opposed any union which would strengthen and give vigor to that power. To this party were added those who had adopted, on theoretical and philosophical grounds, the enthusiasm for liberty which was then prevalent in both hemispheres. It should be added to the characteristics of this party that it looked with indifference upon foreign commerce, cared little for foreign opinion, would have been glad to be isolated from the Old World, and had very crude opinions as to the status and relations of European nations.

This party naturally went on to confound liberty with equality, and to confound political virtue with tenacity of rights. It furthermore confounded power with privilege, and thought that it must allow no civil power or authority to exist, if it meant really to exterminate aristocratic privilege. It was not so clear in its conception of political duties, and certainly failed to see that the best citizen is not the one who is most tenacious of his political rights, but the one who is most faithful to his political duties; that envy and jealousy are not political virtues; and that equality can only be attained by cutting off every social advance, and making the standard, not what is highest, but what is a low average.

An opposing party gradually formed itself of men of wider information and superior training. These men understood the institutions of Great Britain and their contrast to those of any other country in Europe. They understood just what the war had done for the Colonies. They did not consider that it had altered the internal institutions inherited from the mother country, or set the Colonies adrift upon a sea of political speculation to try to find a political Utopia. Some of them joined for a time in the prevalent opinion that the Americans were better and purer than the rest of mankind, but experience soon

taught them their error. Tradition and experience still had weight with them; and, in making innovations, they sought development rather than destruction and reconstruction. They were conservative by property, education, and character.

To this party it was evident that the Colonies had lost much by falling out of the place in the family of nations which they had filled as part of the British Empire, and they believed that a similar place must now be won on an independent footing. They understood the necessity of well-regulated foreign relations, of foreign commerce, and of public credit. Their general effort was, therefore, to secure order and peace in the internal relations of the country by establishing liberty indeed, but liberty under law, and to secure respectability and respect abroad by fidelity to treaties and pecuniary engagements, by a reputation for commercial integrity, and by a development of the arts of peace. The first requisite to all this was a more perfect union.

The two parties, therefore, formed about the issue of a revision of the Articles of Confederation, but it was not until the absolute necessity of the objects aimed at by the Federalists — objects which are in their nature less directly obvious and tangible — had been demonstrated by experience, that this revision was brought about. The Union was not the result of a free and spontaneous effort, but it was “extorted from the grinding necessity of a reluctant people.” A political party which resists a proposed movement by predicting calamitous results to flow from it must abide by the verdict of history. Tried by this test, the anti-Federalists are convicted of resisting the most salutary action in our political history. The victory was won, not by writing critical essays about the movement and the relations of parties, but by the direct and energetic activity of those men of that generation who had enjoyed the greatest advantages of education and culture.

Three evils were inherited under the new Constitution from the old system: slavery (which the framers of the Constitution tolerated, thinking it on the decline), paper-money (which they thought they had eradicated), and the mercantile theories of political economy. These three evils, in their single or combined development, have given character to the

whole subsequent political history of the country. One of them has been eliminated by a civil war. The other two confront us as the great political issues of to-day.

The framers of the Constitution, without having any precise definition of a republic in mind, knew well that it differed from a democracy. No one of them was a democrat. They were, at the time of framing the Constitution, under an especial dread of democracy, on account of the rebellion in Massachusetts. They meant to make a Constitution in order to establish organized or articulated liberty, giving guaranties for it which should protect it from popular tyranny as much as from personal despotism. Indeed, they recognized the former as a great danger, the latter as a delusion. They therefore established a constitutional republic. The essential feature of such a system of government (for it is a system of government, and not a political theory) is that political power be conferred under a temporary and defeasible tenure. That it be conferred by popular election is not essential, although it is convenient in many cases. This method was the one naturally indicated by the circumstances of the United States. The system which was established did not pretend to give direct effect to public opinion according to its fluctuations. It rather interposed delays and checks in order to secure deliberation, and it aimed to give expression to public opinion only after it was matured. It sought to eliminate prejudice and passion by prescribing beforehand methods which seemed just in themselves, independently of conflicting interests, in order that, when a case arose, no advantage of procedure might be offered to either party; and it aimed to subject action to organs whose operation should be as impersonal as it is possible for the operation of political organs to be.

Democracy, on the other hand, has for its essential feature equality, and it confers power on a numerical majority of equal political units. It is not a system of government for a state with any but the narrowest limits. On a wider field it is a theory as to the depositary of sovereignty. It seizes upon majority rule, which is only a practical expedient for getting a decision where something must be done, and a unanimous judgment as to what ought to be done is impossible, and it makes

this majority the depository of sovereignty, under the name of the sovereignty of the people. This sovereign, however, is as likely as any despot to aggrandize itself, and to promulgate the unformulated doctrines of the divine right of the sovereign majority to rule, the duty of passive obedience in the minority, and that the majority can do no wrong.

Opposition to the Federal Constitution died out in a year or two, and no one could be found who would confess that he had resisted its adoption. Parties divided on questions of detail and of interpretation, and the points on which they differed were those by which the Constitution imposed delays and restraints upon the popular will. The administrations of Washington and Adams threw continually increasing weight in favor of constitutional guaranties, as the history of the French Revolution seemed to the Federalists to furnish more and more convincing proofs of the dangers of unbridled democracy. The opposition saw nothing in that history save the extravagant ebullitions of a people new to freedom, and saw rather examples to be imitated than dangers to be shunned. Sympathy and gratitude came in to exercise a weighty influence on political issues. The personal executive and the judiciary were the chief subjects of dislike, and General Washington himself finally incurred abuse more wanton and severe than any President since has endured, except the elder Adams, because the fact was recognized that Washington's personality was the strongest bulwark which the system possessed at the outset.

Democracy, however, was, and still is, so deeply rooted in the physical and economic circumstances of the United States, that the constitutional barriers set up against it have proved feeble and vain. Fears of monarchy have now almost ceased or are ridiculed. Monarchist and aristocrat are now used only as epithets to put down some over-bold critic of our political system; but in the early days of the Republic the mass of the people believed that the supporters of the first two administrations desired aristocracy and monarchy. In a new country, however, with unlimited land, the substantial equality of the people in property, culture, and social position is inevitable. Political equality follows naturally. Democracy is given in the circumstances of the case. The yeoman farmer is the

prevailing type of the population. It is only when the pressure of population, and the development of a more complex social organization, produces actual inequality in the circumstances of individuals, that a political aristocracy can follow and grow upon a social aristocracy. The United States are far from having reached any such state as yet. These facts were felt, if not distinctly analyzed and perceived, even by those who might on theory have preferred monarchical institutions; and, as Washington said, there were not ten men in the country who wanted a monarchy.

The Federalists repaid their opponents with a no less exaggerated fear of their principles and intentions, regarding them as Jacobins and *sans culottes*, who desired to destroy whatever was good, and to produce bloodshed and anarchy. Party spirit ran to heights seldom reached since. Partisan abuse outstripped anything since. It was an additional misfortune that the questions at issue were delicate questions of foreign policy and international law. It is a great evil in a republic that parties should divide by sympathy with two foreign nations, and it is the greatest evil possible that they should not believe in each other's loyalty to the existing constitution.

The deeper movement which was stirring to affect the general attitude or standpoint in which the Constitution was viewed (a matter, of course, of the first importance under a written constitution), and which was changing the constitutional republic into a democratic republic, did not escape the observation of the most sagacious men of the earliest days. Fisher Ames wrote to Wolcott in 1800: "The fact really is, that over and above the difficulties of sustaining a free government, and the freer the more difficult, there is a want of accordance between our system and the state of our public opinion. The government is republican; opinion is essentially democratic. Either events will raise public opinion high enough to support our government, or public opinion will pull down the government to its own level." The fact was, that the government could not, under the system, long remain above the level of public opinion. The Federalists, assisted by the prestige of Washington's name, held it there for twelve years; but they never probably, on any of the party issues, had a majority of

the voters, even with a restricted suffrage. Dating the rise of parties from the time of Jay's Treaty, they had a majority of the House of Representatives only under the excitement of French insult in 1798.

The leading men of 1787-88, as has been said, worked industriously and energetically for political objects. The first decade of the Republic had not passed by, however, before men began to estimate the cost and sacrifices of public life and the worry of abuse and misrepresentation, to compare this with what they could accomplish in politics, and to abandon the contest. To the best public men professions and other careers offered fame, fortune, honorable and gratifying success. In public life they struggled against, and were defeated by, noisy active men, who could not have competed with them in any other profession. Their best efforts were misunderstood and misrepresented. They had no reward but the consciousness of fulfilling a high public duty. Furthermore they lacked, as a class, the tact and sagacity which the system indispensably requires. The leaders of the Federal party committed a political blunder of the first magnitude in quarrelling with John Adams, whatever may have been his faults. They thereby separated themselves from the mass of their own party, at a time when parties were so evenly balanced that they required harmony for any chance of success; and they put themselves in the position of a junto or cabal, trying to dictate to the party without guiding its reason. Those of them who had withdrawn from, or been thrown out of, political life by the causes above mentioned were most active in this work of disorganization. They had abandoned that sort of work which they had engaged in at the outset, and which, difficult as it is, is permanently incumbent on the cultured classes of the country, to make the culture of the nation homogeneous and uniform by imparting and receiving, by living in and of and for the nation, contributing to its thought and life their best stores, whatever they are. A breach was opened there which has gone on widening ever since, and which has been as harmful to our culture as to our politics. On the one side it has been left to anti-culture to control all which is indigenous and "American"; and on the other hand American culture has

been like a plant in a thin soil, given over to a sickly dilettanteism and the slavish imitation of foreign models, ill understood, copied for matters of form, and, as often as not, imitated for their worst defects.

An actual withdrawal of the ablest men from political life, such as we have come to deplore, began, then, at this early day. Many others were thrown out for too great honesty and truth in running counter to the popular notions of the day. John Adams incurred great unpopularity for having said that the English Constitution was one of the grandest achievements of the human race, — an assertion which Callender disputed, with great popular success, by dilating upon the corruption of the English administration under George III., but an assertion which no well-informed man would question, in the sense in which it was made. Sedgwick laid down the principle that the government might claim the last man as a soldier, and the last dollar in taxation, — an abstract proposition which is unquestionable, but which Callender disputed, once more with great popular success, by arguing as if it were a proposition to take the last man and the last dollar. Dexter lost a re-election by opposing a clause of the naturalization law, that a foreign nobleman should renounce his titles on being naturalized. It was opposed as idle and frivolous, and favored as if every foreign nobleman would otherwise become by naturalization a member of Congress. Hamilton and Knox abandoned the public service on account of the meagreness of their salaries. Pickering, who left office really insolvent, and with only a few hundred dollars in cash, was pursued by charges of corruption on the ground of unclosed accounts. Wolcott, at the end of long and faithful service, was charged with the responsibility for a fire which broke out in his office, as if he had sought to destroy the records of corrupt proceedings. It is no wonder that these men abandoned public life, and that their example deterred others, unless they were men born to it, who could not live out of the public arena; but it is true now, as it was then, that men of true culture, high character, and correct training can abandon public political effort only by the surrender of some of the best interests of themselves and their posterity. The pursuit of wealth, which is the natural alternative, has always ab-

sorbed far too much of the ambition of the nation, and, under such circumstances, there could be no other result than that a wealthy class should arise, to whom wealth offers no honorable social power, in whom it awakens no intellectual or political ambition, to whom it brings no sense of responsibility, but for whom it means simply the ability to buy what they want, men or measures, and to enjoy sensual luxury. A class of men is produced which mocks at the accepted notions while it uses them, and scorns the rest of us with a scorn which is so insulting only because it is so just. It is based on the fact that we will not undergo the sacrifices necessary to self-defence. This pursuit of wealth was almost the only attractive pursuit to able men who turned their backs on the public service in the early days. In later years professional careers and scientific and literary pursuits have disputed to a great and greater extent the dominion of wealth over the energies of the nation; but politics have not yet won back their due attraction for able and ambitious men.

The Federalists also held a defective political philosophy. They did not see that the strength of a constitutional republic such as they desired must be in the intelligent approval and confidence of the citizens. Adams and Hamilton agreed in supposing that some artificial bond must be constructed to give strength to the system. Hamilton looked for it in the interest of the wealthy class, which he wanted to bind up in the system, — a theory which would have changed it into a plutocracy. Adams sought the bond in ambition for social eminence, and did not see that, where such eminence sprang only from wealth or official rank, the very principle of human nature which he invoked would, under the form of envy, counteract his effort.

The Presidential election of 1801 having been thrown into the House of Representatives, the Federalists added to their former blunder another far more grave. Abandoning their claims to principle and character, they took to political intrigue and bargaining, in the attempt to elect Burr over Jefferson. Their exit from power might otherwise have been honorable, and they might, as an opposition party, have made a stand for inflexible principle and political integrity; but it was hard for them after this to talk of those things, especially as Burr went

on to develop the character which Hamilton had warned them that he possessed. They fell into the position of "independent voters," throwing their aid now with one and now with the other faction of the majority; but history does not show that they ever forced either one or the other to "adopt good measures," for the obvious reason that the majority possessed the initiative. The purchase of Louisiana seemed to them to transfer the power of the Union to the Southern and frontier States, the seat of the political theories which they regarded as reckless and lawless. They feared that the power of the Union would be used to sacrifice commerce, and to put in operation wild theories by which the interests of the Northern and Eastern States would be imperilled, and the inherited institutions of constitutional liberty, which they valued as their best possessions, would be overthrown. The Embargo and Non-intercourse Acts seemed only the fulfilment of these fears. The recourse of a minority has always been to invoke the Constitution, and to insist upon the unconstitutionality of what they could not resist by votes, each party in turn thereby bearing witness to the truth that the Constitution is the real safeguard of rights and liberty. In the last resort also the minority, if it has been local, and has seen the majority threatening to use the tremendous power of the Confederation to make the interests of the minority subservient to the interests of the rest, has felt its loyalty to the Union decline. How far the Federalists went in this direction it is difficult to say, but they certainly went further than they were afterwards willing to remember or confess. They gradually faded out of view as a political power after the second war, and, in the '20's, "Federalist" became a term of reproach.

The opposite party, called Republicans by themselves after 1792, took definite form in opposition to Washington's administration on the question of ratifying Jay's Treaty. They were first called Democrats in 1798, the name being opprobrious. They adopted it, however, first in connection with the former name; and the joint appellation, Democratic Republicans, or either separately, was used indifferently down to the middle of this century. Jefferson was the leader of this party. He did not write any political disquisitions, or aid in the attempts

which have been mentioned to form public opinion ; but his expressions in letters and fugitive writings struck in with the tide of Democracy so aptly and exactly, that he seemed to have put into people's mouths just the expression for the vague notions which they had not yet themselves been able to put into words. Jefferson, in fact, was no thinker. He was a good specimen of the *a priori* political philosopher. He did not reason or deduce ; he dogmatized on the widest and most rash assumptions, which were laid down as self-evident truths. He did not borrow from the contemporaneous French schools, for his democracy is of a different type ; but both sprung from the same germs, and pursued the same methods of speculation. Freneau, Bache, Callender, and Duane wrought continually upon public opinion, and Jefferson entered into the leadership of the party they created, by virtue of a certain skill in giving watchwords and dogmatic expressions for the ideas which they disseminated.

The dogmas which Jefferson taught, or of which he was the exponent, were not without truth. Their fallacy consisted in embracing much falsehood, and also in excluding the vast amount of truth which lay outside of them. For instance, the dogma that the voice of the people is the voice of God, is not without truth, if it means that the enlightened and mature judgment of mankind is the highest verdict on earth as to what is true or wise. This is the truth which is sought to be expressed in the ecclesiastical dogma of Catholicity, but the political and the ecclesiastical dogma have the same limitation. This verdict of mankind cannot be obtained in any formal and concrete expression, and is absolutely unattainable on grounds of speculation antecedent to experiment. It is in history only, or, rather, it constitutes history. In Jefferson's doctrine and practice it resolved itself simply into this practical rule : the test of wisdom for the statesman and truth for the philosopher is popularity. When the statesman has a difficult practical question before him as to what to do, according to this theory he puts forward what seems to him best as a proposition. If, then, the return wave of popular sympathy comes back to him with promptitude and with the intensity to which he is accustomed, he infers that he has proposed wisely, and goes forward. If there is delay or uncertainty in the response,

he draws back. The actual operation of this theory is, that, if the statesman in question is the idol of a popular majority, the approving response is quick and sure, because the proposition comes from him, not because the tribunal of appeal has considered, or can consider, the question. If an unpopular man endeavors to use the same test, the answer is doubtful, feeble, hesitating, or impatient, because those to whom he appeals have not the necessary preparation, or time, or interest to judge in the matter. In general, the theory is popular, because it flatters men that they can decide anything offhand, by the light of nature, or by some prompt application of assumptions as to "natural rights," or by applying the test of a popular dogma or prejudice. It tramples study and thought and culture under foot, and turns their boasts to scorn. On the other hand, it makes statesmanship impossible. Study and thought go for nothing. There can be no authority derived from information or science or training, and no leadership won by virtue of these. If the decision is to come from a popular vote, why not abandon useless trouble and trust to that alone?

Such has been the outcome in history, as will appear further on, of the doctrines which are associated with the name of Jefferson, although they really had their origin in the great social tendencies of the time, and in the circumstances of the American people. The love of philosophizing about government was a feature in the life of the second half of the eighteenth century. The method of philosophizing on assumptions was the only one employed. The Americans, with meagre experience and high purposes, readily took refuge in abstractions. The habit of pursuing two or three occupations at once destroyed respect for special or technical knowledge. There seemed to be nothing unreasonable in referring questions of jurisprudence and international law to merchants, farmers, and mechanics, for them to give an opinion as a mere incident in their regular occupations. Jefferson himself could sit down and develop out of his own consciousness a plan for fortifications and a navy for a nation, in imminent danger of war, with no more misgivings, apparently, than if he was planning an alteration on his estate.

“The further democracy was pushed, first in theory, then in practice, the more completely was the belief in the equality of all [in rights and privileges] converted, in the minds of the masses, into the belief in the equal ability of all to decide political questions of every kind. The principle of mere numbers gradually supplanted the principle of reflection and study.” This tendency reaches its climax in the popular doctrines, that every man has a right to his opinion; and that one man’s opinion is as good as another’s. We have abundant illustration of the might which it gives to “the phrase.”

It has been well said that “men can reason only from what they know,” — a doctrine which would reduce the amount of reasoning to be done by anybody to a very little. The common practice is to reason from what we do not know, which makes every man a philosopher.

Jefferson’s election was the first triumph of the tendency towards democracy, — a triumph which has never yet been reversed. The old conservatism of the former administrations died out, and it is important to observe that, from this time on, we have not the same two parties in conflict as before, but only factions or subdivisions of the one party which, under Washington and Adams, was in opposition to the administration.

The event did not justify the fears which were entertained before the election. Jefferson did not surrender any of the power of the executive. He aggrandized it as neither of his predecessors would have dared to do. He did not surrender the central power in favor of States’ rights; and his foreign policy, governed by sympathy to France and hatred to England, was only too sharp and spirited. It seldom happens to an opposition party to come into power, to have the same question proposed to it as to its predecessor, and to put its own policy to trial. This happened to Jefferson. Jay’s Treaty was hesitatingly signed by Washington, and it gave the country ten years of peace and neutrality. Pinkney and Munroe’s Treaty was rejected by Jefferson, and in six years the country was engaged in a fruitless war.

Madison’s administration revived many of the social usages which Jefferson had ostentatiously set aside, in consistency with the general spirit of preference for what is common over what

is elegant and refined, on the ground of republican simplicity. The natural tendency of the party in power to think that what is right, and that while they are comfortable other people ought to be so, was apparent here. It went on so far during Madison's first term, that the leaders thought it necessary to break the monotony, and to secure again, in some way, the readiness and activity of political life which had prevailed under Jefferson. They forced Madison into the war with England,—a war which brought disturbance into the finances, and spread distress amongst the people, which won some glory at sea only by vindicating the old Federalist policy in regard to a navy, but which was marked by disaster on land until the battle of New Orleans. At the return of peace in Europe, England was left free to deal with the United States, and a peace was hastily made in which the question of impressment, the only question at issue, was left just where it had been at the beginning.

There ensued in our internal politics an "era of good feeling." The old parties no longer had any reason to exist. Some of the Federal doctrines had been adopted. The navy was secure in its popularity. The Federal financial system had been adopted by the party in power. They had contracted a debt, laid direct taxes, and enlisted armies. When confronted by problems of war and debt, they had found no better way to deal with them than the ways which had been elaborated by the older nations, and which they had blamed the Federalists for adopting. The questions of neutrality had disappeared with the return of peace in Europe. The fears of Jacobinism on the one hand and monarchy on the other were recognized as ridiculous. If, however, any one is disposed to exaggerate the evils of party, he ought to study the history of the era of good feeling. Political issues were gone, but personal issues took their place. Personal factions sprang up around each of the prominent men who might aspire to the Presidency, and, in their struggles to advance their favorites and destroy their rivals, they introduced into politics a shameful series of calumnies and personal scandals. Every candidate had to defend himself from aspersions, from attacks based upon his official or private life. The newspapers were loaded down with controversies, letters, documents, and evi-

dence on these charges. The character of much of this matter is such as to awaken disgust and ridicule. Mr. A tells Mr. B that, when in Washington, he was present at a dinner at the house of Mr. C at which Mr. D said that he came on in the stage with Mr. E, who told him that Mr. F had seen a letter from Mr. G, a supposed friend of one candidate, to Mr. H, the friend of another candidate, making charges against the first candidate, which he (Mr. G) felt bound in honor to make known. Mr. B publishes his information, and then follow long letters from all the other gentlemen, with explanations, denials, corroborative testimony, and so on, in endless reiteration and confusion. It was another noteworthy feature of this period, that every public man seemed to stand ready to publish a "vindication" at the slightest provocation, and that in these vindications a confusion between character and reputation seemed to be universal.

These faction struggles culminated in the campaign of 1824. The first mention of General Jackson for the Presidency seems to be in a letter from Aaron Burr to his son-in-law, Alston of South Carolina, in 1815. An effort was being made to form a party against the Virginia oligarchy. Those who were engaged in it sought a candidate who might be strong enough to secure success. Burr justified his reputation as a politician by pointing out the man, but it was yet too soon. The standard of what a Federal officer ought to be was yet too high. The "Albany Argus" said of the nomination, in 1824: "He [Jackson] is respected as a gallant soldier, but he stands in the minds of the people of this State at an immeasurable distance from the executive chair." The name of Jackson was used, however, in connection with the Presidency, by various local conventions, during 1822 and 1823; and, although the nomination was generally met with indifference or contempt in the North and East, it soon became apparent that he was the most dangerous rival in the field. The nominations had hitherto been made by caucuses of the members of Congress of either party. Until Jefferson's second nomination, these had been held under a decent veil of secrecy. Since that time they had exerted more and more complete and recognized control. Crawford was marked for the succession, although he

was under some discipline for having allowed his name to be used in the caucus of 1816 against Munroe. The opposing candidates now discovered that caucus nominations were evil, and joined forces in a movement to put an end to them. This movement gained popular approval on general principles. When the caucus was called, naturally only the friends of Crawford attended, — sixty-six out of two hundred and sixteen Republican members. The nomination probably hurt him. It was proudly said that King Caucus was now dethroned, but never was there a greater mistake. He had only just come of age and escaped from tutelage. He was about to enter on his inheritance.

General Jackson obtained the greatest number of votes in the Electoral College ; and when the election came into the House, a claim was loudly put forward which had been feebly heard in 1801, that the House ought simply to carry out the "will of the people," by electing him. This claim distinctly raised the issue which has been described, of democracy against the Constitution. Does the Constitution give the election to the House in certain contingencies, or does it simply charge them with the duty of changing a plurality vote into an election? No one had a majority, but the House was asked really to give to a major vote the authority which, even on the democratic theory, belongs to a majority.

The election could not but result in the discontent of three candidates and their adherents, but the Jackson party was by far the most discontented and most clamorous. They proceeded to organize and labor for the next campaign. They were shrewd, active men, who knew well the arena and the science of the game. They offered to Adams's administration a ruthless and relentless opposition. There were no great party issues ; indeed, the country was going through a period of profound peace and prosperity which offered little material for history, and little occasion for active political combat. The administration was simple and business-like, and conducted the affairs of the government with that smoothness and quiet success which belong to the system in times of peace and prosperity. Mr. Adams was urged to consolidate his party by using the patronage of the executive, and the opinion has been ex-

pressed that, if he had done so, he could have won his re-election. He steadfastly refused to do this.

The truth was, that a new spirit had come over the country, and that the candidacy of Jackson was the form in which it was seeking admission into the Federal administration. Here we meet with one of the great difficulties in the study of American political history. The forces which we find in action on the Federal arena have their origin in the political struggles and personal jealousies of local politicians, now in one State and now in another; and the doctrines which are propounded at Washington, and come before us in their maturity, have really grown up in the States. Rotation in office began to be practised in New York and Pennsylvania at the beginning of the century. The Federalists then lost power in those States, and their political history consists of the struggles of factions in the Republican party. Jefferson and Madison taught Democracy in Virginia, but it never entered their heads that the "low-down whites" were really to meddle in the formative stage of politics. They expected that gentlemen planters would meet and agree upon a distribution of offices, and that the masses should have the privilege of electing the men they proposed. The Clintons and Livingstones in New York were Democrats, but they likewise understood that, in practice, they were to distribute offices around their dinner-tables.

In the mean time, men like Duane were writing essays for farmers and mechanics, which were read from one end of the Union to the other, in which they were preaching hostility to banks and the "money power," hostility to the judiciary, and to the introduction of the common law of England, the election of judicial officers, rotation in office, and all the dogmas which we generally ascribe to a much later origin. These notions even found some practical applications, as in the political impeachment of judges in Pennsylvania in 1804, — acts which fortunately did not become precedents. The new constitutions which were adopted from time to time during the first quarter of this century show the slow working of this leaven, together with the gradual adoption of improvements far less questionable.

After 1810 also began the series of great inventions which have really opened this continent to mankind. The steam-

boat was priceless to a country which had grand rivers, but scarcely any roads. In 1817 De Witt Clinton persuaded New York to commence the Erie Canal, and before it was finished scores of others were projected or begun. Politically and financially, the system of internal improvements has proved disastrous, but those enterprises helped on the events which we are now pursuing, for they assisted in opening the resources of the continent to the reach of those who had nothing. The great mass of the population found themselves steadily gaining in property and comfort. Their independence and self-reliance expanded. They developed new traits of national character, and intensified some of the old ones. They had full confidence in their own powers, feared no difficulties, made light of experience, were ready to deal off-hand with any problems, laughed at their own mistakes, despised science and study, over-estimated the practical man, and over-esteemed material good. To such a class the doctrines of democracy seemed axiomatic, and they ascribed to democracy the benefits which accrued to them as the first-comers in a new country. They generally believed that the political system created their prosperity; and they never perceived that the very bountifulness of the new country, the simplicity of life, and the general looseness of the social organism, allowed their blunders to pass without the evil results which would follow in an older and denser community. The same causes have produced similar results ever since.

Political machinery also underwent great development during the first quarter of the century. In New York there was perhaps the greatest amount of talent and skill employed in this work, and the first engine used was the appointing power. The opposing parties were only personal and family factions, but they rigorously used power when they got it, to absorb honors and places. The conception of office arose, under which it is regarded as a favor conferred on the holder, not a position in which work is to be done for the public service. Hence the office-holder sat down to enjoy, instead of going to work to serve. If some zealous man got into office who took the latter view, he soon found that he could count upon being blamed for all which went amiss, but would get little recognition

or reward while things went well, and the safest policy was to do nothing. The public was the worst paymaster, and the most-exacting and unjust employer in the country, and it got the worst service. The consequence is that the early political history of New York is little more than a story of the combinations and quarrels of factions, annual elections, and lists of changes in the office-holders. The Clintons and Livingstones united against Burr, who was the centre of an eager and active and ambitious coterie of young men, who already threatened to apply democratic doctrines with a consistency for which the aristocratic families were not prepared. Then they began to struggle with each other until the Livingstones were broken up. Then the "Martling men" and the Clintonians, the Madisonians and the Clintonians, the "Bucktails" and the Clintonians, with various subdivisions, kept up the conflict until the Constitution of 1821 altered the conditions of the fight, and Regency and Anti-regency, or Regency and People's Party, or Regency and Workingmen's Party, became the party headings. The net result of all this for national politics was the production of a class of finished "politicians," skilled in all the work of "organization," which in any wide democracy must be the first consideration. Some of these gentlemen entered the national arena in 1824. The Regency was then supporting Crawford as the regular successor. On its own terms it could have been won for Adams, but this arrangement was not brought about. On reflection, it did not require the astuteness of these men to see that Jackson was the coming man. He was in and of the rising power. He represented a newer and more rigorous application of the Jeffersonian dogmas. His manners, tastes, education, had nothing cold or aristocratic about them. He had never been trained to aim at anything high, elegant, and refined, and had not been spoiled by contact with those who had developed the art of life. He had, moreover, the great advantage of military glory. He had bullied a judge, but he had won the battle of New Orleans. He had hung a man against the verdict of a court-martial, but the man was a British emissary. It was clear that a tide was rising which would carry him into the Presidential chair, and it behoved other ambitious men to cling to his skirts and be carried up with him.

It is in and around the tariff of 1828 that the conflict centres in which these various forces were combined or neutralized to accomplish the result, and the student of our economic or political history cannot pay too close study to that crisis. For the next fifteen years the financial and political questions are inextricably interwoven.

The election of Jackson marks a new era in our political history. A new order of men appeared in the Federal administration. The whole force of local adherents of the new administration, who had worked for it and therefore had claims upon it, streamed to Washington to get their reward. It seems that Jackson was forced into the "reformation" of the government by the rapacity of this crowd. The political customs which had grown up in New York and Pennsylvania were transferred to Washington. Mr. Marcy, in a speech in the Senate, January 24, 1832, on Van Buren's nomination as minister to England, boldly stated the doctrine that to the victors belong the spoils, avowing it as a doctrine which did not seem to him to call for any delicacy on the part of politicians. In fact, to men who had grown up as Mr. Marcy had, habit in this respect must have made that doctrine seem natural and necessary to the political system. The New York politicians had developed an entire code of political morals for all branches and members of the political party machine. They had studied the passions, prejudices, and whims of bodies of men. They had built up an organization in which all the parts were adjusted to support and help one another. The subordinate officers looked up to and sustained the party leaders while carrying the party machinery into every nook and corner of the State, and the party leaders in turn cared for and protected their subordinates. Organization and discipline were insisted upon throughout the party as the first political duty, and there is scarcely a phenomenon more interesting to the social philosopher than to observe, under a political system remarkable for its looseness and lack of organization, the social bond returning and vindicating itself in the form of party tyranny, and to observe under a political system where loyalty and allegiance to the Commonwealth are only names, how loyalty and allegiance to party are intensified. It is one of the forms under which the constant

peril of the system presents itself, namely, that a part may organize to use the whole for narrow and selfish ends. The idea of the commonwealth is lost, and the public arena seems only a scrambling-ground for selfish cliques. In the especial case of the New York factions, this was all intensified by the fact that there were no dignified issues, no real questions of public policy at stake, but only factions of the ins and the outs, struggling for the spoils of office. Naturally enough, the contestants thought that to the victors belong the spoils, — otherwise the contest had no sense at all. In this system, now, fidelity to a caucus was professed and enforced. Bolting, or running against a regular nomination, were high crimes which were rarely condoned. On the other hand, the leaders professed the doctrine that a man who surrendered his claims for the good of the party, or who stood by the party, must never be allowed to suffer for it, and that a man who bolted must be punished. The same doctrines had been accepted more or less at Washington, but in a feeble and timid way. From this time they grew into firm recognition. Under their operation politics became a trade. The public officer was, of necessity, a politician, and the work by which he lived was not service in his official duty, but political party labor. The tenure of office was so insecure, and the pay so meagre, that few men could be found of suitable ability who did not think that they could earn their living more easily, pleasantly, and honorably in some other career. Public service gravitated downwards to the hands of those who, under the circumstances, were willing to take it. It presented some great prizes in the form of collectorships, etc., the remuneration for which was in glaring contrast with the salaries of some of the highest and most responsible officers in the government; but, for the most part, the public service fell into the hands of men who were exposed to the temptation to make it pay.

After the general onslaught on the caucus in 1824, it fell into disuse as a means of nominating State officers, and conventions took its place. At first sight this seemed to be a more complete fulfilment of the democratic idea. The people were to meet and act on their own motion. It soon was found, however, that the only change was in the necessity for higher organization. In the '30's there was indeed a fulfil-

ment of the theory which seems now to have passed away. There was a spontaneity and readiness in assembling and organizing common action which no longer exists. There was a public interest and activity far beyond what is now observable. One is astonished at the slight occasion on which meetings were held, high excitement developed, and energetic action inaugurated. The anti-Masonic movement, from 1826 to 1832, is a good instance. The "Liberty party" (Abolitionists), the "Native Americans," the "Anti-renters," all bear witness to a facility of association which certainly does not now exist. It is, however, an indispensable prerequisite to the pure operation of the machinery of caucus and convention. The effort to combine all good men has been talked about from the beginning, but it has always failed on account of the lack of a bond between them as strong as the bond of interest which unites the factions.

During the decade from 1830 to 1840 a whole new set of machinery was created to fit the new arrangements. This consisted in committees, caucuses, and conventions, ramifying down finally into the wards of great cities, and guided and handled by astute and experienced men. Under their control the initiative of "the people" died out. The public saw men elected whom they had never chosen, and measures adopted which they had never desired, and themselves, in short, made the sport of a system which cajoled and flattered while it cheated them. If a governor had been elected by some political trickery a little more flagrant than usual, he was very apt, in his inaugural, to draw a dark picture of the effete monarchies of the Old World, and to congratulate the people on the blessings they enjoyed in being able to choose their own rulers.

This period was full of new energy and turbulent life. Railroads were just beginning to carry on the extension of production which steamboats and canals had begun. Immigration was rapidly increasing. The application of anthracite coal to the arts was working a revolution in them. On every side reigned the greatest activity. Literature and science, which had before had but a meagre existence, were coming into life. The public journals, which had formerly been organs of per-

sons and factions, or substitutes for books, now began to be transformed into the modern newspaper. The difficulties and problems presented by all this new life were indeed great, and the tasks of government, as well to discriminate between what belonged to it and what did not, as to do what did belong to it, were great. On the general principles of the Democratic party of the day in regard to the province of government, history has already passed the verdict that they were sound and correct. On the main questions which divided the administration and the opposition, it must pass a verdict in favor of the administration. These issues were not indeed clear, and the parties did not take sides upon them definitely, as is generally supposed. Free-trade, so far as it was represented by the compromise tariff, was the result of a coalition between Clay and Calhoun against the administration, after Calhoun's quarrel with Jackson had led the latter to revoke the understanding in accordance with which Calhoun retired from the contest of 1824 and took the second place. The South was now in the position in which the Northeastern States had found themselves at the beginning of the century. The Southerners considered that the tariff of 1828 had subjected their interests to the interests of another section, which held a majority in the general government, and that the Union was being used only as a means of so subjecting them. They seized upon the Kentucky and Virginia resolutions of 1798, which Jefferson and Madison had drawn when in opposition, as furnishing them a ground of resistance, and threw into the tariff question no less a stake than civil war and disunion. On this issue there were no parties. South Carolina stood alone.

Banks had been political questions in the States and in the general government from the outset. The history of Pennsylvania and New York furnishes some great scandals under this head. The methods of banking employed had called down the condemnation of the most conservative and sensible men from time to time, and had aroused some of less well-balanced judgment to indiscriminate hostility. Jackson's attack on the Bank of the United States sprang from a political motive, and he proposed instead of it a bank on the "credit and revenues of the government," — a proposition too vague to be under-

stood, but which suggested a grand paper-machine, at a time when the Bank of the United States was at its best. This attack rallied to itself at once all the local banks, and the great victory of 1832 was not a victory for hard money so much as it was a victory of the State banks over the national bank. The removal of the deposits was a reckless financial step, and the crash of 1837 was its direct result.

The traditional position of the Democratic party on hard money has another source. In 1835 a party sprang up in New York City as a faction of Tammany, which took the name of the "Equal Rights party," but which soon received the name of the "Loco Foco party," from an incident which occurred at Tammany Hall, and which is significant of the sharpness of party tactics at the time. This party was a radical movement inside of the administration party. It claimed, and justly enough, that it had returned to the Jeffersonian fountain and drawn deeper and purer waters than the Jacksonian Democrats. It demanded equality with a new energy, and in its denunciations of monopolies and banks went very close to the rights of property. It demanded that all charters should be repealable, urgently favored a metallic currency, resisted the application of English precedents in law courts and legislatures, and desired an elective judiciary. It lasted as a separate party only five or six years, and then was cajoled out of existence by superior political tactics; but it was not without reason that the name spread to the whole party, for, laying aside certain extravagances, two or three of its chief features soon came to be adopted by the Democrats.

On the great measures of public policy, therefore, the position of the administration was not clear and thorough, but the tendency was in the right direction, especially when contrasted with the policy urged by the Whigs. In regard to internal improvements, the administration early took up a position which the result fully justified, and in its opposition to the distribution of the surplus revenue its position was unassailable. In its practical administration of the government there is less ground for satisfaction in the retrospect. Besides the general lowering of tone which has been mentioned, there were scandals and abuses which it is not necessary to specify. Gen-

eral Jackson's first cabinet fell to pieces suddenly, under the effect of a private scandal and the President's attempt to coerce the private social tastes of his cabinet, or rather of their wives. He held to the doctrine of popularity, and its natural effect upon a man of his temper, without the sobriety of training and culture, was to stimulate him to lawless self-will. He regarded himself as the chosen representative of the whole people, charged, as such, with peculiar duties over against Congress. The "will of the people" here received a new extension. He found it in himself, and what he found there he did not hesitate to set in opposition to the will of the people, as it found expression through their constitutional organs. At the same time the practice of "instructions" marked an extension, on another side, of the general tendency to bring public action closer under the control of changing majorities.

Van Buren's election was a triumph of the caucus and convention, which had now been reduced to scarcely less exactitude of action than the old congressional caucus. Van Buren, however, showed more principle than had been expected from his reputation. He had to bear all the blame of the evil fruits resulting from the mistakes made during the last eight years. Moving with the radical or locofoco tendency, he attempted to sever bank and state by the independent treasury, and in so doing he lost the support of the "Bank Democrats." This, together with the natural political revulsion after a financial crisis, lost him his re-election.

The Whig party was rich in able men, which makes it the more astonishing that one cannot find, in their political doctrines, a sound policy of government. The national bank may still be regarded as an open question, and favoring the bank was not favoring inconvertible paper-money; but their policy of high tariff for protection, internal improvements, and distribution of the surplus revenue, has been calamitous so far as it has been tried. They also present the same lack of political sagacity which we have remarked in the Federalists, whose successors in general they were. They oscillated between principle and expediency in such a way as to get the advantages of neither; and they abandoned their best men for available

men at just such times as to throw away all their advantages. The campaign of 1840 presents a pitiful story. There are features in it which are almost tragic. An opportunity for success offering, a man was chosen who had no marks of eminence and no ability for the position. His selection bears witness to an anxious search for a military hero. It resulted in finding one whose glory had to be exhumed from the doubtful tradition of a border Indian war. The campaign was marked by the introduction of mass meetings and systematic stump speaking, and by the erection of "log-cabins," which generally served as bar-rooms for the assembled crowd, so that many a man who went to a drunkard's grave twenty or thirty years ago dated his ruin from the "hard-cider campaign." After the election it proved that hungry Whigs could imitate the Democrats of 1829 in their clamor for office, and, if anything, better the instruction. The President's death was partly charged to worry and fatigue. It left Mr. Tyler President, and the question then arose what Mr. Tyler was, — a question to which the convention at Harrisburg, fatigued with the choice between Clay and Harrison, had not given much attention. It was found that he was such that the Whig victory turned to ashes. No bank was possible, no distribution was possible, and only a tariff which was lame and feeble from the Whig point of view. The cabinet resigned, leaving Mr. Webster alone at his post. In vain, like a true statesman, he urged the Whigs to rule with Mr. Tyler, since they had got him and could not get rid of him or get anybody else. Like a true statesman, again, he remained at his post, in spite of misrepresentation, until he could finish the English treaty, and it was another feature of the story that he lost position with his party by so doing. The system did not allow Mr. Webster the highest reward of a statesman, to plan and mould measures so as to impress himself on the history of his country. It allowed him only the work of reducing to a minimum the harm which other people's measures were likely to do. In the circumstances of the time war with England was imminent, and there was good reason for fear, if the negotiation should fall into the hands of the men whom Mr. Tyler was gathering about him. The Whigs were broken and discouraged, and as their discipline had always been

far looser than that of their adversaries, they seemed threatened with disintegration. The other party, however, was divided by local issues and broken into factions. Its discipline had suffered injury, and its old leaders had lost their fire, while new ones had not arisen to take their places. The Western States were growing into a size and influence in the confederation which made it impossible for two or three of the old States to control national politics any longer.

In this state of things the Southern leaders came forward to give impetus and direction to the national administration. They had, what the Southern politicians always had, leisure for conference. They had also character and social position, and a code of honor which enabled them to rely on one another without any especial bond of interest other than the general one. They had such a bond, common and complete, in their stake in slavery. They could count on support throughout their entire section without doubt or danger. They had a fixed programme also, which was an immense advantage for entering on the control of a mass of men under no especial impetus. They had also their traditional alliance with the Democrats of the North,—an alliance which always was unnatural and illogical, and which now turned to the perversion of that party. They prepared their principles, doctrines, and constitutional theories to fit their plans.

Difficulties with Mexico in regard to Texas had arisen during Jackson's administration. These difficulties seemed to be gratuitous and unjust on the part of the United States, and they seemed to be nursed by the same power. The diplomatic correspondence on this affair is not pleasant reading to one who would see his country honorable and upright, as unwilling to bully as to be bullied. Such was not the position of the United States in this matter.

It was determined by the Southern leaders to annex Texas to the United States, and to this end they seized upon the political machinery and proceeded to employ it.

The election of Polk is another of the points to which the student of American politics should give careful attention. The intrigues which surrounded it have never been more than partially laid bare, but, if fairly studied, they give deep insight

into the nature of the forces which operate in the name of the will of the people. The slavery issue was here introduced into American politics ; and when that question was once raised, it " could not be settled until it was settled right." For ten years efforts were made to keep the issue out of politics, and to prevent parties from dividing upon it. What was desired was that the old parties should stand in name and organization, in order that they might be used, while the actual purposes were obtained by subordinate means. A party with an organization and discipline, and a history such as the Democratic party had in 1844, is a valuable property. It is like a well-trained and docile animal which will go through the appointed tasks at the given signal. It disturbs the discipline to introduce new watchwords and to depart from the routine, in order to use reason instead of habit. Hence the effort is to reduce the new and important issues to subordinate places, to carry them incidentally, while the old commonplaces hold together the organization. It is safe to say, however, that, in the long run, the true issues are sure to become the actual issues, and that delay and deceit only intensify the conflict.

Upon Polk's election the independent treasury and comparative free-trade were fixed in the policy of the government for fifteen years, with such beneficial results as to render them the proudest traditions of the party which adopted them.

Mr. Calhoun had abandoned the opposition during Van Buren's administration, and had begun to form and lead the Southern movement. His own mind moved too rapidly for his adherents, and he could not bring them to support him up to the positions which he considered it necessary to take ; but, even as it was, the steps of the Southern programme came out with a rapidity, and were of a character, to shock the imperfectly prepared Northern allies. The Democratic party of the North was not a proslavery party. Whigs and Democrats at the North united in frowning down Abolition excitements, and in maintaining the compromises of the Constitution. Old-line Whigs and hunker Democrats agreed in the conservatism which resisted the introduction of this question ; but when Van Buren was asked, as a test question to a candidate, in 1844, whether he would favor the annexation of Texas, the subject of slavery in

the Territories was thrown into the political arena from the Southern side. It was not then a question of abolishing slavery in the Southern States, which could not have obtained discussion except in irresponsible newspapers and on irresponsible platforms. It was not a question of spreading slavery into the old Territories, for Texas and the Indian Territory barred the way to all which the Missouri Compromise left open. It was now a question of taking or buying or conquering new territory for slavery, and every one knew well that the chief reason for the revolt of Texas was that Mexico had abolished slavery. The South indeed claimed to have suffered aggressions and encroachments in regard to slavery ever since the adoption of the Constitution, and the attempt was now to be made to secure recompense. In the form in which the proposition came up it was no slight shock to those who had always been in alliance with the South. Party men like Van Buren and Benton drew back. Southerners like Clay resisted. The actual clash of arms, fraudulently brought about and speciously misrepresented, put an end to discussion, and aroused a war fever under the pernicious motto, "Our country, right or wrong." If we are a free people and govern ourselves, our country is ourselves, and we have no guaranty of right and justice if we throw those standards behind us the moment we have done wrong enough to find ourselves at war. The war ended, moreover, in an acquisition of territory, which, of course, was popular; and it proved that this territory was rich in precious metals, which added to the popular estimate of it. The antecedents of the war were forgotten.

Its political results, however, were far more important. Calhoun now came forward to ward off a long conflict in regard to slavery in these Territories, by the new doctrine that the Constitution extended to all the national domain, and carried slavery with it, — a doctrine which his followers did not, for ten years afterwards, dare to take up and rigorously apply, and which divided the Democratic party of the North. The repeal of the Missouri Compromise and the enactment of the Fugitive Slave Law were only steps in the conflict which was as yet confused, but which was clearing itself for a crisis. The South, like every clamorous suitor, reckless of consequences, obtained wide concessions from an adversary who sought peace

and contentment, and who saw clearly the dangers of a struggle outside the limits of constitution and law.

The Abolitionists, from their first organization, pursued an "irreconcilable" course. They refused to vote for any slaveholder, or for any one who would vote for a slaveholder, and refused all alliances which involved any concession whatever. They more than once, by this course, aided the party most hostile to them, and, in the view of the ordinary politician, were guilty of great folly. They showed, however, what is the power of a body which has a principle and has no ambition, and is content to remain in a minority. Probably, if the South had been more moderate, the Abolitionists would have attracted little more notice than a fanatical religious sect; but, as events marched on, they came to stand as the leaders in the greatest political movement of our history. The refusal of the Whig Convention of 1848 to adopt an antislavery resolution, and the great acts above mentioned, together with the popular reaction against a party which, if it had had its way, would never have won the grand Territories on the Pacific, destroyed the Whig party. The party managers, enraged at the immense foreign element which they saw added year by year to their adversaries, forming a cohort, as it appeared, especially amenable to party discipline and the dictation of party managers, took up the Native American movement, which had had some existence ever since the great tide of immigration set in. The effort was wrecked on the obvious economic follies involved in it. How could a new country set hindrances against the immigration of labor? Politically, the effect was great in confirming the allegiance of naturalized voters, as a mass, to the Democratic party as the party which would protect their political privileges against malicious attacks. The formation of the Free-Soil party or its development into the Republican party, brought the extension of slavery into the Territories, and the extension of its influence in the administration of the government, distinctly forward as the controlling political issue.

On this issue the Democratic party, as a political organization, made up traditionally of the Southern element which has been described, of so much of the old Northern Democratic party as had not been repelled by the recent advances in

Southern demands, and of the large body of immigrants who regarded that party as the poor man's and the immigrant's friend, fell out of the place it had occupied as the representative of the great democratic tide which flows through and forms our political history. This movement has been in favor of equality. It has borne down and obliterated all the traditions and prejudices which were inherited from the Old World. It has eliminated from our history almost all recollection of the old Federal party, with its ideas of social and political leadership. It has crushed out the prestige of wealth and education in politics. It has restrained the respect and authority due to office, by narrow tenures, and by cutting away all terms of language and ceremonial observances tending to mark official rank. The Northern hatred of slavery in the later days was due more to the feeling that it was undemocratic than to the feeling that it was immoral. It was always an anomaly that the Virginians should be democrats *par excellence*, and should regard the yeomen farmers of New England as aristocrats, when, on any correct definitions or standards, the New England States were certainly the most democratic commonwealths in the world. Slavery was an obvious bar to any such classification; and when slavery became a political issue, the parties found their consistent and logical position. The rise and victory of the Republican party was only a continuation of the same grand movement for equality. The old disputes between Federalists and Jeffersonians had ended in such a complete victory for the latter, that the rising generation would have enumerated the Jeffersonian doctrines as axioms or definitions of American institutions. Every school-boy could dogmatize about natural and inalienable rights, about the conditions under which men are created, about the rights of the majority, and about liberty. The same doctrines are so held to-day by the mass of the people, and they are held so implicitly that corollaries are deduced from them with a more fearless logic than is employed upon political questions anywhere else in the world. Even scholars and philosophers who reflect upon them and doubt them are slow to express their dissent, so jealous and quick is the popular judgment of an attempt upon them. The Democratic party of the '50's was,

therefore, false to its fundamental principle of equality when it followed its alliance with the South, and allowed itself to be carried against equality for negroes. Whether there were not subtle principles of human nature at work is a question too far reaching to be followed here.

With the rise of the Republican party there came new elements into American politics. The question at stake was moral in form. It enlisted unselfish and moral and religious motives. It reached outside the proper domain of politics,—the expedient measures to be adopted for ends recognized as desirable,—and involved justice and right in regard to the ends. It enlisted, therefore, heroic elements,—sacrifice for moral good, and devotion to right in spite of expediency. At the same time, the issue was clear, simple, single, and distinct. The organization upon it was close and harmonious, not on account of party discipline, but on account of actual concord in motive and purpose. The American system was here seen in many respects at its best, and it worked more nearly up to its theoretical results in the election of Lincoln, a thoroughly representative man out of the heart of the majority, than in any other election in our history. It is probably the recollection and standard of this state of things which leads men now on the stage to believe that corruption is spreading and that the political system is degenerating. It is one of the peculiarities of the government of the United States, that it has little historical continuity. If it had more, or if people had more knowledge of their own political history, the above-mentioned opinion would find little ground. The student of history who goes back searching for the golden age does not find it.

All the heroic elements in the political issue of 1860 were, of course, intensified by the war. There was the consciousness of patriotic sacrifice in submitting to loss, bloodshed, and taxation, for an idea, for the further extension of political blessings long enjoyed and highly esteemed. After the war, national pride and consciousness of power expanded naturally, but the questions which then arose were of a different order. They were properly political questions. They concerned taxation, finance, the reconstruction of the South, the status of the freedmen. The war fervor, or the moral fervor of the political

contest could not remain at the former high pitch. There followed a natural reaction. Questions which touched the results of the war brought a quick and eager response. It would not be in human nature if that response should not be tinged by hatred of rebels and the worse passions which war arouses. For war is at best but a barbarous makeshift for deciding political questions. Let them be never so high and pure in their moral aspects, war drags them down into contact with the lowest and basest passions,—cruelty, rapacity, and revenge. Moreover, it was natural that people should want rest and quiet after the anxiety and excitement of war. Every householder desired to enjoy in peace the political system which he had defended and established by war; he did not care to renew the excitement on the political arena. The questions which arose were no longer such as could be decided by reference to a general political dogma, or a moral principle, or a text of Scripture. They were such as to perplex and baffle the wisest constitutional lawyer, or the ablest financier, or the wisest statesman. The indifference and apathy which ensued were remarkable, and they probably had still other causes. The last twenty-five years have seen immense additions to the number and variety of subjects which claim a share of the interest and attention of intelligent men. Literature has taken an entirely new extension and form. Newspapers bring daily information of the political and social events of a half-dozen civilized countries. New sciences appeal to the interest of the entire community. Educational, ecclesiastical, sanitary, and economic undertakings, in which the public welfare is involved, demand a part of the time and effort of every citizen. At the same time, trade and industry have undergone such changes in form and method that success in them demands far closer and more exclusive application than formerly. The social organization is becoming more complex, the division of labor is necessarily more refined, and the value of expert ability is rapidly rising.

It follows from all this that, while public interests are becoming broader and weightier, the ability of the average voter to cope with them is declining. It is no wonder that we have not the political activity of the first half of this century. In-

stead of grasping at the right to a share in deciding, we shrink from the responsibility. We are more inclined to do here what we should do in any other affair, — seek for competently trained hands into which to commit the charge. The frequent elections, instead of affording a pleasurable interest to the ordinary voter, appear to be tiresome interruptions. What he wants is good government, honorable and efficient administration, business-like permanence, and exactitude. He recognizes in the short terms and continual elections, not an opportunity for him to control the government, but an opportunity for professional hangers-on of parties to make a living, and a continually recurring opportunity for schemers of various grades to enter and carry out their plans when people are too busy to watch them. The opinion seems to be gaining ground that, for fear of power, we have eliminated both efficiency and responsibility; that if power is united with responsibility, it will be timid and reluctant enough; and that the voter needs only reserve the right of supervision and interference from time to time. The later State constitutions show a reaction from those of the first half of the century in the length of terms of office, and in the general tendency of the people to take guaranties against themselves or their representatives. There seems also to be a tendency to investigate the theory of appointments or elections to office as a means of devising more satisfactory means to that end. No system will ever give a self-governing people a government which is better than they can appreciate; but the very belief, to which we have before referred, that the government is degenerating, is the best proof that the public standards as to the *personnel* and the methods of the government are rising. It seems to be perceived that the plan of popular selection is applicable to executive and legislative officers, but that it is not applicable to the judiciary or to administrative officers. In the one case, broad questions of policy control the choice; in the other case, personal qualifications and technical training, in regard to which the mass of voters cannot be informed and cannot judge. In some quarters, an unfortunate effort has been made to charge the duty of making certain appointments upon the judges, because, as a class, they retain the greatest popular confidence, and the restraints

of their position are the weightiest. This, however, seems to be using up our last reserves. There has been abundant criticism of political movements and circumstances of late years. At first sight, it does not appear to be very fruitful. People seem to pay as little heed to it as devout Catholics do to the asserted corruptions of the Church; but other and deeper signs point to a conservative movement, slow, as all popular movements must be, but nevertheless real.

The political party system which had been developed previous to the war underwent no change during the heroic period. The doctrines of spoils and of rotation in office were indeed condemned, but it appeared (as it must appear to any new party coming into office) that the interests at stake were too great to be risked by leaving any part of the administration in the hands of disaffected men, and, with some apologies, the changes were made. It is the fate of the party in power to draw to itself all the unprincipled men who seek to live by politics, and to lose its principled adherents as, on one question after another, they disapprove of its action. The moral and heroic doctrines or sentiments of the Republican party were just the political principles which offered the best chance to the unprincipled. A man of corrupt character could "hate slavery" when that was the line of popularity and success, and could be "loyal" when only loyal men could get offices. The political machinery whose growth has been traced was adopted by the new party as a practical necessity, and the men "inside politics" still teach the old code wrought out by Tammany Hall and the Albany Regency, not only as the only rules of success for the ambitious politician, but also as the only sound theories on which the Republic can be governed. In those quarters where hitherto the refinements of the system have all been invented, a new and ominous development has recently appeared in the shape of the "Boss." He is the last and perfect flower of the long development at which hundreds of skilful and crafty men have labored, and into which the American people have put by far the greatest part of their political energy. It has been observed that the discipline or coercion which we dread for national purposes and under constitutional forms appears with the vigor of a military depotism

in party; and that the conception of loyalty, for which we can find no proper object in our system, is fully developed in the party. Under this last development, also, we find leadership, aristocratic authority of the ablest, nay, even the monarchical control of the party king. He is a dictator out of office. He has power, without the annoyance or restraints of office. He is the product of a long process of natural selection. He has arisen from the ranks, has been tried by various tests, has been trained in subordinate positions, and has come up by steady promotions,—all the processes which, when we try to get them into the public service, we are told are visionary and aristocratic. With the now elaborate system of committees rising in a hierarchy from the ward to the nation, with the elaborate system of primaries, nominating committees, caucuses, and conventions, not one citizen in a thousand could tell the process by which a city clerk is elected. It becomes a special trade to watch over and manage these things, and the power which rules is not the “will of the people,” but the address with which “slates” are made up. Organization is the secret by which the branches of the political machinery are manipulated, when they are not, by various devices, reduced, as in the larger cities, to mere forms. In these cases the ring and the “Boss” are the natural outcome. Any one who gets control of the machine can run it to produce what he desires, with the exception, perhaps, that, if he should try to make it produce good, he might find that this involved a reverse action of the entire mechanism, under which it would break to pieces. These developments are as yet local, for the plunder of a great city is a prize not to be abandoned for any temptation which the general government can offer. In some cases they are hostile to the power of the Federal office-holders where that is greatest and most dangerous, so that they neutralize each other. At the same time some of the Federal legislation in the way of “protection” and subsidies offers high inducements and abundant opportunities for debauching the public service. There are means of rewarding adherents, distributing largess, collecting campaign funds, performing favors, afforded by the system in great abundance; and it tends to bind men together in cliques up and down through the service, on the basis of mu-

tual assistance and support and protection. Suppose that the ring and the "Boss" should ever be ingrafted upon this system!

It cannot be regarded as a healthful sign that such a state of things creates only a laugh, or a groan of disgust, or at best a critical essay. It seems sometimes as if the prophecy of Calhoun had turned into history: "When it comes to be once understood that politics is a game, that those who are engaged in it but act a part, and that they make this or that profession, not from honest conviction or an intent to fulfil them, but as a means of deluding the people, and, through that delusion, acquiring power, — when such professions are to be entirely forgotten, the people will lose all confidence in public men. All will be regarded as mere jugglers, the honest and patriotic as well as the cunning and profligate, and the people will become indifferent and passive to the grossest abuses of power, on the ground that those whom they may elevate, under whatever pledges, instead of reforming, will but imitate the example of those whom they have expelled."

In the final extension of the conception of the "will of the people," and of the position of Congress in relation to it, Congress has come to be timid and faltering in the face of difficult tasks. It knows how to go when the people have spoken, and not otherwise. The politician gets his opinions from the elections, and the legislature wants to be pushed, even in reference to matters which demand promptitude and energy. Statesmanship has no positive field, and has greatly declined. The number of able men who formerly gave their services to mould, correct, and hinder legislation, and upon whom the responsibility for leading on doubtful and difficult measures could be thrown, has greatly decreased. The absence of "leaders" has often been noticed. The fact seems to be that able men have observed that such statesmen as have been described bore the brunt of the hard work, and were held responsible for what they had done their best to hinder; that they cherished a vain hope and ambition their whole lives long, and saw inferior men without talent or industry preferred before them. It is a sad thing to observe the tone adopted towards a mere member of Congress as such. When one reflects that he is a member of the grand legislature of the nation, it is no gratifying sign of

the times that he should be regarded without respect, that a slur upon his honor should be met as presumptively just, and that boys should turn flippant jests upon the office, as if it involved a dubious reputation. If the Republic possesses the power to meet and conquer its own tasks, it cannot too soon take measures to secure a representative body which shall respect itself and be respected, without doubt or question, both at home and abroad; for the times have changed and the questions have changed, and we can no longer afford to govern ourselves by means of the small men. The interests are now too vast and complex, and the greatest question now impending, the currency, contains too vast possibilities of mischief to this entire generation to be left the sport of incompetent men. The democratic Republic exults in the fact that it has conducted a great civil war to a successful result, against the expectations of its enemies. A far heavier strain on democratic-republican self-government lies in the questions now impending,— can we ward off subsidy-schemers? can we correct administrative abuses? can we purify the machinery of elections? can we revise erroneous financial systems and construct sound ones? The war appealed to the simplest and commonest instincts of human nature, especially as human nature is developed under democratic institutions. The questions before us demand for their solution high intellectual power and training, great moderation and self-control, and perhaps no less disposition to endure sacrifices than the war itself.

Such a review as has here been given of the century of American politics must raise the questions, whether the course has been upward or downward, and whether the experiment is a success or not. On such questions opinions might fairly differ, and I prefer to express upon them only an individual opinion.

The Federal political system, such as it is historically in the intention and act of its framers, seems to me open to no objection whatever, and to be the only one consistent with the circumstances of the case. I have pursued here a severe and exact criticism of its history, as the only course consistent with the task before me, and the picture may seem dark and ungrati-

ying. I know of no political history which, if treated in the same unsparing way, would appear much better. I find nothing in our history to throw doubt upon the feasibility and practical advantage of a constitutional Republic. That system, however, assumes and imperatively requires high intelligence, great political sense, self-sacrificing activity, moderation, and self-control on the part of the citizens. It is emphatically a system for sober-minded men. It demands that manliness and breadth of view which consider all the factors in a question, submit to no sophistry, never cling to a detail, or an objection, or a side issue to the loss of the main point, and, above all, which can measure a present advantage against a future loss, and individual interest against the common good. These requirements need only be mentioned to show that they are so high that it is no wonder we should have fallen short of them in our history. The task of history is to show us wherein and why, so that we may do better in future.

If the above sketch of our political history has been presented with any success, it shows the judgment which has been impressed upon my mind by the study of it, namely, that the tenor of the Constitution has undergone a steady remoulding in history in the direction of democracy. If a written constitution were hedged about by all the interpretations conceivable, until it were as large as the Talmud, it could not be protected from the historical process which makes it a different thing to one generation from what it is to another, according to the uses and needs of each. I have mentioned the forces which seem to me to produce democracy here. They are material and physical, and there is no fighting against them. It is, however, in my judgment, a corruption of democracy to set up the dogma that all men are equally competent to give judgment on political questions; and it is a still worse perversion of it to adopt the practical rule that they must be called upon to exercise this ability on all questions as the regular process for getting those questions solved. The dogma is false, and the practical rule is absurd. Caucus and wire-pulling and all the other abuses are only parasites which grow upon these errors.

Reform does not seem to me to lie in restricting the suffrage or in other arbitrary measures of a revolutionary nature.

They are impossible, if they were desirable. Experience is the only teacher whose authority is admitted in this school, and I look to experience to teach us all, that the power of election must be used to select competent men to deal with questions, and not to indirectly decide the questions themselves. I expect that this experience will be very painful, and I expect it very soon.

On the question whether we are degenerating or not, I have already suggested my opinion that we are not degenerating. The lamentations on that subject have never been silent. It seems to me that, taking the whole community through, the tone is rising and the standard is advancing, and that this is one great reason why the system seems to be degenerating. Existing legislation nourishes and produces some startling scandals, which have great effect on people's minds. The same legislation has demoralized the people, and perverted their ideas of the functions of government even in the details of town and ward interests. The political machinery also has been refined and perfected until it totally defeats the popular will, and has produced a kind of despair in regard to any effort to recover that of which the people have been robbed; but I think that it would be a great mistake to suppose that there are not, behind all this, quite as high political standards and as sound a public will as ever before. An obvious distinction must be made here between the administration of the government, or the methods of party politics, and the general political morale of the people. Great scandals are quickly forgotten, and there are only too many of them throughout our history. Party methods have certainly become worse and worse. The public service has certainly deteriorated; but I should judge that the political will of the nation never was purer than it is to-day. That will needs instruction and guidance. It is instructed only slowly and by great effort, especially through literary efforts, because it has learned distrust. It lacks organization, and its efforts are spasmodic and clumsy. The proofs of its existence are not very definite or specific, and any one in expressing a judgment must be influenced by the circle with which he is most familiar; but there are some public signs of it, which are the best encouragement we have to-day.

W. G. SUMNER.

ART. III.—ABSTRACT SCIENCE IN AMERICA, 1776-1876.

IF we were called upon to decide in what field of purely intellectual effort a people, situated as ours were at the beginning of their national existence, would be least likely to distinguish themselves, we should hardly hesitate to say, the field of abstract science in all its parts, physical, political, and intellectual. One reason for this conclusion lies upon the surface. That precise knowledge of the first knowable principles which underlie the phenomena of nature, and that seemingly useless tracing of the ideas of Nature through the minutest details of her operations, are, among important intellectual employments, those of which the natural man, though enlightened, least feels the want. He cannot live in society without feeling the want, first, of a code of laws, and then of a knowledge of law in general. He cannot advance far in intellectual capacity without feeling the want of a literature with which to beguile his weary hours, nor can he read much that is good without appreciating the difference between the good and the bad. It needs no rare and peculiar gifts or taste to be enraptured with the charms of music, and with the beauties of form and color. But how will he ever learn to care for the seeming technicalities of scientific investigation? Undoubtedly, a curiosity to know many things respecting the phenomena of nature will arise as naturally as will the love of literature and art, and will be as widely extended. We cannot imagine a man loving to read without feeling some curiosity respecting the nature and purpose of the heavenly bodies, while a certain amount of knowledge respecting animals and plants is necessarily acquired by every backwoodsman. But the acquisition of knowledge of this class does not constitute scientific progress. When we touch upon the consideration of the circles of the celestial sphere, the atomic weights of the chemical elements, the homologies of corresponding parts of the various species of animals, or the laws of hereditary descent, and especially when we enter upon that minute analysis of every-day subjects which is at the same time so necessary to their philosophic comprehension, and so

distasteful to the ordinary mind, our hearers will rapidly disappear.

We have thus an obvious cause why, in a country like ours, scientific investigation worthy of the name should commence only when a very advanced point of intellectual development had been reached. But an allied, though less obvious element enters among the causes of scientific progress which is worthy of very serious consideration. The intellect of a nation may exhibit peculiarities, as well as that of an individual, leading to its being eminently successful in some directions, while wholly failing in others. We do not here refer to well-known general differences in the intellectual power of different races, the Caucasian and the Mongolian, for instance, but to differences of special faculties or tastes between people whose general powers are on the whole equal. A study of the history of modern science will show plenty of instances of the diffusion of special powers among a large part of a nation or of their seeming total absence, for which it is extremely difficult to account. One such is afforded by the development of the theory of gravitation. The establishment of universal gravitation was an achievement of the British intellect, as well as of Newton, since several of his countrymen were very little behind him in the course of thought which led to this result. The superiority of Englishmen in the powers of investigation necessary to establish the theory would seem to be evinced by the readiness with which they perceived its truth and traced its effects, while a generation of Continental mathematicians occupied themselves with puerile objections to it. But, with the publication of the *Principia*, the development of the subject came to a dead stop in England, and while Clairant, Lagrange, and Laplace were working out the results of Newton's discovery, there was scarcely an Englishman who could even understand their writings. The liberal rewards by which the British government have sometimes so honorably expressed the national appreciation of the men who have made gravitation instrumental in the determination of longitude at sea have all gone to foreigners. Although the British Nautical Almanac is mainly founded on data derived from the Greenwich observations, the labor of putting these data into a tabular shape to be used has, during the entire century, been performed by foreigners.

We see here a striking difference between the intellectual productions of two peoples, — a difference showing itself through two centuries, and yet arising from what might seem as too slight a difference in the characters of the intellects themselves to require notice. The English intellect was perhaps the more scientific of the two; it was more ready in grasping the ideas of nature, in seeing the correlations of natural phenomena, in distinguishing between the relevant and the irrelevant in propositions, and in freeing itself from the trammels of philosophic systems when it turned its attention toward the external world. In short, it was generally superior in everything connoted by the word “sagacity.” But, the general idea of nature once grasped and expressed in mathematical language, the Continental intellect was that best adapted to tracing it to its results by deductive operations. These required powers of minute analysis, of close concentration upon minute points, and of patient endurance while carrying through long trains of thought, which the English intellect did not possess, and has never since acquired.

A critical history of scientific thought during the three centuries which have elapsed since the revival of science would, no doubt, show many other fruits of the difference we have sought to elucidate. It would be seen that in everything requiring sagacity, in pregnant suggestions, and in discoveries reached by induction, England would be ahead of any other nation; while the development of the discoveries, or at least every branch of the development which required patient industry and minute analysis, would have been found left to other nations. The illustration need not be confined to physical science. Political economy, as hitherto developed, is just that branch of applied thought, if we may use the expression, which most requires sagacity for its apprehension and application; and this quality is seen pre-eminently in the large comparative ratio of sense to nonsense in the mass of English writing on the subject.

One disposed to study what we might call the intellectual natural history of nations would find an instructive subject for investigation in the different views of Darwinism prevalent in the four great intellectual nations of the world. In the land

of its origin it is a subject of fierce controversy between the religious world on the one side and the scientific one on the other; in Germany, received with universal applause as one of the great philosophic triumphs of the century; in France, so utterly groundless a piece of speculation as to be unworthy of the attention of a biologist; in America, received by naturalists, but viewed by the public as something on which it is quite incompetent to pass judgment.

If, now, one enters upon a critical examination of the judging faculty of the American people, as shown by their reasoning on subjects of every class, one can hardly avoid being struck by a certain one-sidedness in its development, having an important bearing on its fitness for scientific investigation. Within a certain domain, usually characterized as that of practical sagacity and good sense, they have nothing to be ashamed of. Where the conclusion is reached by a process so instinctive that it is not reduced to a logical form, and where there is no need of an analysis of first principles, we may not unfairly claim to be a nation of good reasoners. But, if we pursue any subject of investigation into a region where a higher or more exact form of reasoning is necessary, — where first principles have to be analyzed, and a concatenation of results have to be kept in the mind, — it must be admitted that we do not make a creditable showing. It might almost seem as if the dialectic faculty among us had decayed from want of use. The plain “common-sense” of the fairly intelligent citizen has in most cases so completely sufficed for all the purposes where judging capacity was required, that the need of more exact methods of thought has never been felt by the nation at large.

There is hardly a branch of our intellectual activity in which the close and critical observer will not find plenty of illustrations of the peculiarity which we have described. Taking as our standard of comparison the three leading intellectual nations of Europe, England, France, and Germany, the latter alone can compete with us in provision for, and appreciation of, the education of the masses. But when we look at the higher education, — whether that of the polished gentleman, the statesman, the engineer, or the financier, — we find ourselves far behind those countries in both the provision and the

appreciation. Our elementary text-books are as good as any. What few we have on the higher logic and the more advanced branches of mathematics are very deficient, and, in the case of the mathematical text-books, betray a lack of clear and accurate thought which would not be tolerated in a teacher in the other countries we have mentioned. If we examine our politics and jurisprudence, the general astuteness of our public men, their faculty of adapting means to such ends as are immediately in view, and their successful diplomacy, cannot be questioned. But where in our legislation shall we find any effort to look beyond the necessities of the immediate present? What shall we say to the continued presence of usury laws in our statute-books, and to the rarity with which a man is found in public life with the logical acumen necessary to see through the fallacies of the protection theory? What a disheartening picture of our jurisprudence would be found in the mere citation of the various legal decisions to which the legal-tender acts have given rise!

This national one-sidedness of the judging faculty has a very important bearing on the state of science, because the successful cultivation of the higher regions of science, no matter in what department, requires the highest development of that faculty. Neither instinct nor good sense will alone suffice to comprehend the more recondite workings of natural law. It is true that a large majority of the more important applications of scientific principles may be made, and a great deal of valuable scientific work may be done, without the highest development of the dialectic faculty. But such applications and such work do not constitute the highest employment of the scientific investigator. It is, therefore, very naturally to be expected that the development of the higher branches of science in our country should be marked by the same backwardness which characterizes the higher forms of thought in other directions; and that, however eminent we might stand in the lower branches, we should find ourselves far behind in the higher ones.

The same subject may be viewed from a slightly different standpoint. No two sets of ideas are more completely antagonistic than those which animate the so-called "practical man"

of our country, and those which animate the investigator in any field which deserves the name of science or philosophy. The facts that, in its methods and results, nothing is really more practical, in the best sense of the word, than modern science, and that it is to the discovery of natural laws by men of science that all the benefits which the practical man most highly values are due, do not in any way lessen this antagonism of fundamental ideas. The first condition of really successful and important scientific investigation is, that men shall be found willing to devote much labor and careful thought to that subject from pure love of it, without having in view any practical benefit to be derived from it as an important consideration. The true scientist takes as much interest in the geography of the moon as in that of the earth, and studies the minutest animalcule as zealously as man himself. The very fact that utility is ostensibly ignored gives a breadth to scientific research which it would otherwise never have had, and to which the discoveries which have been of such incalculable utility to mankind are really due. If the practical man should object to useless knowledge as dross, we should reply, that he cannot have the gold without the dross; that such a thing as a discoverer of useful natural laws and an ignorer of useless ones is unknown in the world's history, and will probably remain so. In fact, so far as the discovery of new laws is concerned, it is impossible to say whether a discovery will or will not be useful until after it is made,—perhaps generations afterward; therefore he who waits to see the utility before seeking for the discovery will never discover at all.

The early settlers of our country, with whom the great problem of life was to overcome in a hard struggle for existence, could not be expected to cultivate such a taste for science as we have described. To suppose that they would encourage and support any of their number in laborious investigation for the mere sake of knowing, would be to expect of them something more than human. Indeed, it would be almost a violation of natural law to expect the development of a trained investigator in such a state of society. It is therefore very gratifying that American science can point to so worthy a man as Benjamin Franklin as its father. Commencing as it did with so

capital a discovery as that of the identity of lightning and electricity, it might almost have seemed to come into life full grown ; and if Franklin had had coadjutors and successors comparable to himself, it might have soon been in a position to compete with the science of Europe. When we seek for such successors as he had and compare their circumstances with those under which rapid advances have been made in a knowledge of natural laws, we shall see one reason why the growth of the tree planted by Franklin was so slow and stunted.

One of the first things which will strike us in the history of modern scientific investigation is that such investigation is seldom pursued with any great success by isolated men. We do not here speak of the work of those rare characters who may be said to take advantage of some favorable epoch in the progress of thought, such as Copernicus, Newton, and Linnæus, but of that gradual working out and developing of ideas which constitute the great body of scientific doctrine. Men like those we have named might arise in any age which should be ready for them, but, so thoroughly is every field now explored and reduced to technical forms, that we can see no further opportunity for isolated genius to work out radically new ideas. The immense advance which has been made since the time of Newton has been effected almost entirely by men working together in close associations. The mutual attrition of ideas, the competition of rival workers, the zest gained by intercourse with kindred spirits, though of a lower order of genius, are all most important factors in such advance. We thus find that the formation of the Royal Society of London, and of the Academy of Science in France, marks the epoch of the revival of science in Europe. During the two centuries which have since elapsed, the history of these associations has been almost identical with that of the knowledge of nature in their respective countries.

From the time of Franklin the progress of American science depended very largely upon the success with which close association could be maintained among men of learning. He made an excellent beginning in the establishment of the Philosophical Society. Among the early members of this society the only name at all eminent in the field of science, besides

that of Franklin, which has descended to us, is that of Rittenhouse. The latter had not, any more than his great contemporary, the advantages of a thorough educational training, much of his youth having been spent in agricultural labor. Still, his circumstances were not such as to debar him from intellectual pursuits, and he made himself as complete a master of the physical science of his times as was possible to one so situated. Among his fellow-citizens much of his reputation was due to his clocks and orreries; but it is his skill as a practical astronomer which has carried his name down to posterity. Having no public observatory, occupying no position which made it part of his duty to devote himself to science, supporting himself by his own resources, and working principally with instruments of his own construction, it is not to be expected that his work would compare in extent with that of a more favored astronomer. But, in general precision, the first requisite of astronomical observation, his work was well up to the average of his time. His observations of the celebrated transit of Venus in 1769 have every appearance of being among the best that were made, the care and skill devoted to them being as great as elsewhere, while the meteorological conditions were unusually favorable. It is remarkable that his observations were continued through at least the first half of the Revolutionary War.

That the early days of the Republic should prove unfavorable to the thorough prosecution of philosophical research of any kind was to be expected. The mind of the nation was too much occupied with the more pressing necessities of the situation to admit of any great activity in a direction not leading to immediate practical results. Still, some circumstances show that the intellectual spirit of the nation was not at all diminished by the terrible struggle through which it had passed. In 1783 the Legislature of Pennsylvania made a grant to the Philosophical Society of four hundred dollars,—a mark of official appreciation which we doubt whether such a body has since received either from the general government or from that of any State. Within ten years of the acknowledgment of American Independence the same society erected for its own use what, from the point of view of that time, was a “neat, convenient, and spacious edifice.” Few, indeed, are the scientific societies

in this country which have been able to do as much. The public appreciation of Rittenhouse was shown by the numerous public employments which were almost forced upon him, which, as in the case of Franklin, deprived him of the time necessary for scientific research.

If, from such a cause as public appreciation, Franklin and Rittenhouse were in a certain sense lost to science, we shall find it difficult to believe that the development of American science would thereby be retarded. The natural result would seem to be that many of the rising generation would have been incited to emulate them in their career. The spirit we have described was eminently favorable to such a result. Most astonishing is it then to find that, far from any such progressive development as would have been looked for, far even from science in what was then its principal centre remaining stationary, the tree planted by the two men we have named not only bore no fruit, but absolutely withered away. For half a century there was nothing worthy of the name of national science, nothing on which the public could look, and say with pride that it was a product of our educational system or of our effort to promote the knowledge of nature. Two or three men of genius arose, but they received no stimulus to exertion from the public, or, if they did, their works betray the want of attraction with other men of like pursuits able to criticise them. A suggestive circumstance is, that they were in the main self-taught.

During the interval of which we speak the sciences the cultivation of which would have seemed most natural in this country received no more lasting impress from American investigation than did others. The flora and fauna of the new country must have offered a field of research tempting to the scientific taste and remunerative in a practical point of view. That it was wholly uncultivated it would be incorrect to assert, but none of its cultivators did anything to leave a permanent impress on science. Not only did no creative genius show itself among them, but it is questionable whether any of them were as much abreast of the European science of the time as were Franklin and Rittenhouse. That our country should have produced no Lavoisier, Cuvier, or Jussieu is something which cannot greatly surprise us, but why should we not have had plenty to adopt,

to criticise, or to develop their ideas? If we knew exactly how long it took the new systems of classification to supersede that of Linnæus throughout our country, the knowledge would have much historical interest, but would not, we fear, be at all provocative of national pride. The fact is that our science was little more than a timid commentary on European science, in which certain models, supposed to be standards, were followed in the same way that the schoolmen of the Middle Ages followed the philosophy of Aristotle.

The thorough investigation of the cause of this period of apparent intellectual darkness would require us to enter into the spirit and the history of the times to an extent possible only to the professional historian. Yet some consideration of the state of things indicated by it may not be out of place.

To insure the successful cultivation of science in a country two things are necessary; the cultivators must be born, and they must be nurtured. In the case of those rare characters of whom a country hardly produces more than one a century, the nurture may enter as a very small element, and may therefore be of a very imperfect kind; still it must enter in some form. To expect that the greatest genius, if kept until middle age in the backwoods, away from both books and living teachers, would ever produce anything great in the way of technical scientific research, would be hopeless. We may find in the general state of public opinion during the period of which we speak a reason why men of pure research were not nurtured. But may there not also be something in our country unfavorable even to the birth of men of the highest scientific genius? Or, taking into account the one-sidedness in the general development of the American intellect which we have endeavored to describe, may it not be that the analytical power which traces the laws of nature through the complex conditions under which they operate is partially replaced by the inventive genius which has taken the lead in giving the world steam-navigation, the telegraph, and the sewing-machine? If a wide diffusion of the power in question were necessary to our being a scientific nation, we might have to admit that such has been the case with us. But, since the requisite number of philosophic investigators is, in any case, very small, the fact that

the general mind of the nation may not be inclined in the scientific direction does not preclude the possibility of this small number of inquirers being born.

The question of the influence of race and descent is largely involved in the one we are considering. If we consider the views of hereditary genius maintained by Mr. Galton to be correct in the case of the genius of the scientific investigator, we must consider the descent of the American nation to be unfavorable to the production of such genius. The class of philosophers and men of science has not been fairly represented, even in proportion to its small numbers, among the emigrants who have come over to our shores. The necessary result is that, as compared with the intellectual nations of Europe, a disproportionately small part of our population can count philosophers and investigators among their ancestors.

But, however true the theory of hereditary descent may be, when we consider that general force of character which makes a man felt among his fellows, the preponderance of evidence is decidedly against its extension to scientific genius. The latter, though confined to a single race, seems to be almost entirely sporadic. In a few cases it may be traced from father to son; we question whether it has ever been traced further. It seems as if whatever peculiarity of organization it may be connected with is of too slight a character to be either perpetuated or insured against among the offspring of intelligent people. There is nothing about its possessors which causes them to strike the minds of others. In their appetites and their organizations, and indeed in everything outside the sphere of accurate thought, they are a sufficiently commonplace class. Altogether there is no sound reason for believing that the class in question is born in any smaller proportion here than in other intellectual nations, and whatever apparent deficiencies we may find are probably due to defects of nurture. Returning to the consideration of American science between 1790 and 1840, we find some confirmation of the views we have expressed in the fact that during this period we find several American names of the first rank so far as regards mental power, who, if they have failed to fill a position corresponding to their genius, have done so only in consequence of the circumstances by which they were surrounded.

As representatives of the small class of which we are speaking, we may take Bowditch, Bache, and Henry, of whom it is remarkable that not one received a college education. Notwithstanding the singularly unfavorable occupations of his early days, there was hardly a man living who was a more complete master of the celestial mechanics of his time than was Bowditch. When we consider that he acquired this mastery by his unaided efforts, from pure love of the subject, while engaged in mercantile business or seafaring pursuits, we can hardly refuse him, in genius, a place alongside of Laplace and Hansen. But he was never stimulated by the attrition of kindred minds, as he would have been at Paris or Berlin, and, in consequence, his original investigations in no way correspond to what we might have expected from him had he been born in Europe. It may be that his best work was done in stimulating the study of the higher mathematics among his countrymen. The work for which he will always be best known is his translation of the "*Mécanique Céleste*" of Laplace, and it is by its effect in this direction that it must be judged. As a monument of industry, and a proof of Bowditch's mastery of the subject, this work cannot be surpassed. To adding anything to the subject it made no claims, its object being mainly an educational one. Its most remarkable feature was a minute and detailed commentary, in which every difficult operation was explained, and by which a student would be able to follow the reasoning of the author, without any higher mathematical knowledge than the imperfect native text-books of the time would afford him. This commentary had undoubtedly the effect of enabling many to read the work who would not otherwise have found themselves able to do so; yet we cannot concede that this was the most advantageous form in which the help could have been given. No one who could not read Laplace without the Commentary would derive any real profit from reading him by its aid, while he might derive profit by studying more elementary subjects. It was like furnishing a classical author with an interlinear translation, that the unfavored student might read him without studying the grammar of his language. This Commentary, as well as some other of Bowditch's writings, betrays the want of that inspiration which

comes from immediate contact with the masters of the subject. Could he, in youth, have spent but a single year in the drill of a European university, the effect would have been seen in all that he did.

It is strikingly illustrative of the absence of everything like an effective national pride in science that two generations should have passed without America having produced any one to continue the philosophical researches of Franklin. The natural effect of the success of such a man, in such a direction, ought to have been that studies and experiments in electricity would have had an especial interest for his countrymen of the next generation, and that electricity would thus have become, in some measure, a national subject of research. But not the slightest trace of such an effort showed itself. Until Henry commenced his experiments, there was not an electrical investigation published in the country which the present time has any object in remembering. As with American scientists in general, Henry's published investigations do not give an adequate idea either of his skill or of the amount of research he actually undertook, without any of those surrounding circumstances which, in other countries, stimulate men to research. Had he been in the situation of Faraday, he might have gained the same name. If he lacked any of Faraday's skill in designing experiments, he would have made it up in accurate grasp of the hypotheses which the experiment was to prove or disprove. His discovery of some of the laws of electricity, which made the Morse telegraph possible, is well known, though, as usual, popular attention was entirely concentrated upon the inventor who put the laws into practice, while the discoverer was nearly forgotten. Whatever he might have done in the field of original research, his activity in that direction necessarily diminished greatly when he took an administrative position, in which his functions were to stimulate others.

The career of Bache was not unlike that of Henry. He was less self-taught than either of the other representative men we have named, being a graduate of West Point. Like most of the great representatives of American science, the activity of his early years in scientific research was directed

into a different channel by the position he occupied during his later years. The conduct of a series of physical experiments requires an amount of careful, leisurely thought, which it is quite impossible for one filling the position of Superintendent of the Coast Survey to devote to them.

From what we have said of the history and labors of the principal distinguished representatives of American science, it will be seen that the comparatively imperfect development of our thought in the direction of science is not due to any lack of native ability. However averse to the precision of scientific thought the general mind of the nation may be, it produces a sufficient number of great minds to satisfy the needs of its intellectual position. But we see very clearly a great lack of continuity of work among our leading scientific men. Few, indeed, are the American investigators who have followed up their subject during their whole lives, working it out from step to step, as Europeans have done. Sometimes their failure has arisen from lack of persistence, experience showing that success would be accompanied by no reward proportionate to the labor bestowed, but more often from the less elevated but more pressing duties of life rendering it impossible to devote the necessary thought to the pursuit of research. Even when the duties are those of a professor's chair, in which research would seem the most appropriate employment of leisure hours, it has commonly happened that the duties of the position absorbed the entire energies of the occupant.

The science of which we have thus far sought to give a clear idea may be said to stand entirely on its own merits as a part of the intellectual life of the nation. Its laborers were men who engaged in it from pure love of the subject, proceeded in much their own way, and ceased when circumstances diverted their energies into other channels. But in no civilized country is it thus left to stand entirely alone; for although a government may do nothing especially looking to the promotion of pure science, there are so many important applications of scientific principles necessary to the public welfare, that some regard must be paid to applied science. And it is soon found impossible to make a really useful application of science, without such a thorough investigation of the subject in hand

that the progress of pure science will thereby be promoted. A complete idea of the progress of our national science cannot therefore be formed, without considering its relations to our government, and the measures the latter has taken in promoting it.

The leading governments of Europe have generally taken a pride in promoting scientific knowledge, and it was to the efforts thus arising that we may trace the scientific revival of the seventeenth century, which in its progress has exerted so important an influence on our civilization. In the beginning no merely utilitarian end was in view. Monarchs like Louis XIV. and Frederic the Great were desirous of having their reigns rendered illustrious by being connected with the progress of intellectual activity, of all kinds, and so sought to surround themselves with men of eminent reputation. Thus arose or flourished the academies of science of the principal European capitals. The general policy with respect to these bodies has not greatly varied. The members generally receive a small pension or other stipend from their government, not to support them, but to secure them against absolute penury under all circumstances. The most important aid furnished by the government comes in the shape of the means of making and publishing researches. In return the academy is the adviser of the government in all matters pertaining to the application of science in its administration.

Of course there are some differences of detail in the organization of these bodies, and in England the difference is so wide that that country cannot be said to have an academy of sciences, in the Continental sense of the phrase. The place of such a body is partially filled by the Royal Society, but the government does not in any way contribute to the support of this society, and does not even assist it in printing its Transactions. Still, its influence with government is not materially different from that of the Continental academies, since, although not formally recognized as an official adviser, it is as constantly consulted as if it were so recognized.

So far as we are aware, there has been but a single occasion in its history in which our government has felt the want of a scientific advisory body. If we were to say that it is one of

the fundamental doctrines of our nation and government, that one intelligent and influential citizen can do anything and everything as well as another, we should be liable to the charge of strong overstatement. But it would be equally untrue to assert that the opposite doctrine was maintained and acted upon. The fact that there are any operations, the conduct of which requires special skill and special training, is one which our administrators generally are very slow to recognize, unless compelled by the force of circumstances. No doubt this is fundamentally due to the general versatility and adaptability of the average American, which in the large majority of cases take the place of skill and special training with entire success. It is therefore not surprising that the government has seldom felt the need of the advice of specialists in matters pertaining to administration, even in those cases where entire success would have seemed to require the aid of the highest scientific knowledge.

We have said that there was one exception to this. When the civil war broke out the government was overwhelmed with inventions of improved machinery of war, the practicability of which could not be judged without the aid of scientific experts. A board of such experts was therefore formed for their preliminary examination. This suggested the idea of a permanent academy, which should examine and report upon any subject of science or art, whenever called upon to do so by any department of the government, and thus arose the National Academy of Sciences, which was chartered by act of Congress in 1863. The future success of this body cannot yet be foreseen, but it has met with several drawbacks in the past. In the first place, although ostensibly organized to perform the functions of an European academy, this object was wholly ignored in its organization. The first condition of such performance is that the members should reside at or near the capital, and that the body should hold frequent meetings. But the members actually incorporated were scattered all over the country, so that more than one or two meetings a year were out of the question. In view of this fact, the question whether, in selecting the members, scientific eminence was the controlling consideration, is hardly worth discussing. In the next place, the charter

contained an absurd provision which prevented the Academy receiving support or remuneration of any kind from the government in return for its services. We say absurd, because the very first condition of the usefulness of the body was thereby violated. What should we think of Congress chartering an academy of law, with the fundamental condition that the members should give their legal services, without compensation, to all departments of the government, in any law-suits in which the latter might be involved? To appreciate the situation, we must remember that the Academy receives no support of any kind, direct or indirect, from the government. If the latter furnished it with a room for its meetings, its offices, or its collections; if it paid the expenses of members attending its meetings; if it printed or circulated the scientific papers read before and accepted by the society, or helped to do so, — the case would not be so bad. One year the printing of these papers was commenced at the government printing-office, but it was stopped, on the ground that the printing was in violation of the condition on which the Academy was founded, because it cost the government money. The general result is, that the contrast between the eminent name of the Academy and the celebrity of its members on the one hand, and its means of doing either harm or good on the other, is ridiculous in a degree of which the members themselves can hardly help being conscious. It is too suggestive of eminent respectability out at the elbows.

We have had a recent example of the entire absence of all necessity for scientific advice in the administration of the government in the origin of the system of weather reports and probabilities by the Army Signal Office. In importance and extent the meteorological system organized by this office has no parallel in the world. Its cost is in the same proportion, far exceeding anything that any European nation ever thought of devoting to such a purpose. Had so magnificent a project, involving such an expenditure, been presented to any other government strong enough to undertake the matter, the first idea suggested would have been that the opinion of the highest scientific authorities on the practicability and importance of the project must be obtained before putting it into execution.

The support and approval of competent meteorologists would have been absolutely necessary, in order to secure the sanction of the government. Yet, so far as the public is aware, not a solitary scientific authority or meteorological expert was ever officially asked either to report upon the scheme or to give advice respecting its execution. The sole responsibility rests with the single military officer who conceived and executed it, and he receives the sole official credit for it.

We wish the reader to consider this fact both in its favorable and unfavorable aspects. We see it in the latter aspect when we consider how completely the men whose studies and researches rendered the prediction of the course of storms possible have been ignored or forgotten when their labors were to be made practically useful. Several of the most able and active of these men were Americans, a few of whom are still living. The favorable side is clear enough, and we have no desire to depreciate the organizing ability shown by the chief signal officer in putting the system into execution, or the liberality shown by Congress in sustaining it.

The most important relations of the government to science have been those growing out of the public works of the former, and especially the public surveys which it has undertaken. One of its earliest wants in this direction was that of a thorough survey of its coasts and harbors, and we find measures to supply this want undertaken early in the present century. The execution of the plan was, however, postponed and interfered with by various causes, which prevented its being earnestly undertaken until 1832. The scientific conduct of this work has been excellent from the very beginning, — a result which is due to the competent hands by which it was organized. Its first superintendent, Mr. Hassler, was a thorough student and an experienced geodesist, who brought to the work the highest ideas of system and accuracy, but did not possess the faculty of securing the good-will of Congress. Under the administration of his successor, the lamented Bache, it became the most perfectly organized survey in the world, employing the most improved methods, and leading to the most accurate results. Among the methods which it took an active part in originating, the most important is that of the determination of

longitudes by telegraph,—a method which has been almost revolutionary in its results. By it a chain of longitudes now extends from San Francisco across the American continent, the Atlantic Ocean, Europe, and Asia, to the Pacific coast of Siberia, with a degree of certainty which would not have been attained in a century by any other method.

Another system of surveys by which the government indirectly contributes to advance the study of science is that of the Territories. When we consider the extent of these Territories, their unknown mineral wealth, their possible capabilities for the support of population and the remuneration of industry, and the necessity of an accurate knowledge of their geography and geology as a preliminary to the development of their resources, it will not appear surprising if increasing attention is devoted to geographical and geological surveys. The character of these surveys has corresponded pretty closely to the scientific development of the country at the time they were made, and a critical examination of them is sufficient to show the futility of the idea that pure and applied science can be successfully divorced. The earlier ones were simple “land surveys,” the object of which was to divide the region over which they extended into “townships” of ten miles square. The Land Office being unable to command the skill necessary to do this properly, geometry was painfully mangled by the unavailing efforts of the government surveyors. If we examine the Land Office maps, we shall find here and there lines running awry to the extent of five, or even ten degrees. As a general rule, however, we shall find a gradual improvement extending through the last forty years. The necessity of passing public criticism results in a constant effort on the part of each survey to command the services of competent geologists, topographers, and astronomers; and this, again, encourages young men to train themselves for such positions. The rivalry between two competing departments of the government for the control of the survey of the Territories—however greatly to be deplored for some of its results—has exerted a good effect in stimulating each party to do the best work; and, on the whole, the general execution of these surveys is as good as could be expected under our administrative system.

We have described and illustrated the generally low state of American science during the first forty years of the present century, — a state which may be described as one of general lethargy, broken now and then by the activity of some first-class man, which, however, commonly ceased to be directed into purely scientific channels. Since 1840 there has been a great and general increase of activity in some directions, which, from some points of view, would seem to have inaugurated an entirely new state of things, and to promise well for the future. But there are also many features of the case which strongly suggest the backward state of things from which the present condition sprung, so that the old and the new can be traced side by side.

On the side of biology, a considerable share of recent development can be traced to the advent of Agassiz among us. The eclat of his European reputation evoked immediately on his arrival an amount of public attention and consideration which a native would have been a long time in commanding; while his remarkable power as a teacher turned the thoughts of many young men toward his favorite subject. Nor must his powers as a public lecturer be ignored. It is hard to calculate the effect which he produced on the public mind in this way, extending as it does far beyond the limits to which his immediate personal intercourse was confined.

What Agassiz did in biology was done by Mitchel in astronomy. All that he lacked in purely scientific ability and reputation was made up by his unrivalled power of charming the public by his descriptions of astronomical phenomena. If his name lacked the flavor of foreign birth and eminence, the defect was compensated by the interest and elevation of his subject, which was peculiarly fitted to interest both the highest and lowest class of intelligent hearers. It is not unlikely that he sowed much of the seed from which the American astronomy of the present has developed.

If we consider simply the appliances for astronomical research, and the number of persons in some way engaged in such research, the development of our astronomy during the present generation is something surprising. In 1832 Professor Airy made a report on the progress and present state of astron-

omy to the British Association for the Advancement of Science, in which he had to announce his inability to give any account of practical astronomy in America, because he did not know of a single active observatory in that country. In the beginning of 1840 there was not an observatory in the country which, in the completeness of its equipment, could claim to be greatly in advance of the private collection of instruments made by Rittenhouse sixty years before. The interest in astronomy taken by a few officers of the navy, the stimulus of the great comet of 1843, and the wide public interest in the subject which has in one way and another been excited, have altogether resulted in the building and partial or entire equipment of a far greater number of observatories than, with the limited funds at disposal, can be kept in operation. Highly as we must estimate the large views and public spirit which have prompted the erection of these establishments, we cannot but deplore the lack of sound knowledge which has resulted in such a waste of valuable means. If all the money thus spent in scattered efforts had been concentrated on two or three large establishments, it would have gone far toward making our country the foremost of the world in the science of astronomy.

The recent extraordinary progress to which we allude is not confined to special sciences, but may be said to include all the material facilities for the prosecution of research of every kind, as well as for the acquisition of a thorough scientific education. Our important chemical laboratories and our best scientific schools, with perhaps a single exception, are of an origin as recent as that of our observatories. If we study our museums and laboratories, and notice the activity manifested by the former in collecting everything which may illustrate the biology, ethnology, and archæology of this continent, and by the latter in the instruction of the young, we see the strong side of our science, the side on which we can look with unqualified satisfaction. If we feel any regret or humiliation on the reflection that it is not the growth of a century, and that during the greater part of our national existence we had nothing of the kind to show, the present can take to itself all the greater credit for having produced everything, while the rapid advance implied will render us all the more hopeful of the future.

Still confining our attention to the side thus presented, and considering the national energy which has been expended in its development, we might fancy ourselves rapidly approaching the day when we shall be the leading scientific nation of the world.

But when we turn from the material side to the side of ideas, when, instead of observatories, telescopes, laboratories, museums, explorers, we consider the progress of the literature and thought of science, the contrast is painfully astonishing. Far from seeing an advance corresponding to that of the material side, much industry and pains would be required to trace any great improvement. If we were to draw our illustrations of this entirely from the exact sciences, in which mathematics is the leading instrument of research, the comparison might not be considered entirely fair. Let us then take a subject within the capacity of every thoughtful mind. No movement in modern thought has been so revolutionary in itself, or so fertile in its results, as that which has been wrought by Darwinism. Probably as much interest has been excited in this country by this subject as in any other. The doctrine has made its way among our naturalists as it has among those of England and Germany, and its literature has probably as many readers here as in England. What, then, have been our contributions to this literature? We know of but three or four American writers who have contributed anything at all; two of them, Chauncey Wright and John Fiske, having done so in this Review. Except the "Cosmic Philosophy" of the latter, which embraces an extended review of a subject of which Darwinism is one of the most important parts, not a single independent work on the subject has yet been produced on this side the Atlantic. Of essays and reviews in periodicals, far the larger part have been the production of Mr. Wright and Professor Asa Gray. Its opposers on scientific grounds have been Professors Agassiz and Bowen, the latter having considered it as "the latest Form of the Development Theory," in the Memoirs of the American Academy. We believe this to be a complete list of important American contributors to the scientific thought of the subject, purely technical investigation of facts in natural history being omitted.

In this connection it may not be amiss to remind the reader that arguments designed to prove that Darwinism either is or is not subversive of religious belief, or to attack or defend it on religious grounds, cannot be regarded as contributions to the science of the subject; but that a work designed to prove on purely scientific grounds that the doctrine is untenable would not, on account of the side it espoused, be excluded. In literature of the former class it is not impossible that we might be able to make some showing.

When we compare the quantity of our literature of Darwinism with that of Germany, the contrast is astonishing. Not a year elapses in which the German press does not turn out a more extended philosophic literature of the subject than the American press can show during the sixteen years which have elapsed since the publication of the "Origin of Species." Turning from this discouragingly small quantity we may find relief and hope in considering the quality of our contributions. In philosophic comprehension, scientific accuracy, and clearness of thought, the essays of Wright and of Gray might well head the list in a competition among those of all nations.

What we have said of the literature of Darwinism is true of that of every branch of pure science. Not only is our scientific literature of every kind meagre in the extreme, but the facilities for the publication of any kind are extremely restricted, and have increased but little during the last fifty years. Silliman's Journal is now, as it was half a century ago, the solitary standard journal of pure science published in the country. There has been no increase in the means or the publication of our learned societies at all proportionate to the increase in the material facilities for research. How can we account for this? Why should not the vast increase in the means of research have been accompanied by a corresponding increase in scientific publications and discussions? The answers to these questions depend on a variety of circumstances, some of which are connected with the general state of scientific thought here, while others can be brought out only by a comparison of our resources for publication with those of other countries.

In other intellectual countries a large portion of the published

scientific research appears in the transactions of learned societies. A comparison of the means at the disposal of our societies and those of other nations will at once explain a part of the difference. On the Continent the learned societies are under the immediate patronage of their respective governments, by which the expense of publishing their transactions is borne. In this country we are aware of but a single State which has thus taken upon itself the patronage of science, and it will probably surprise many readers to hear that this is Wisconsin. It is not impossible that there are other States which have done the same thing, but, if so, we have not become aware of the fact.

Deprived of State aid, our societies must depend upon their limited resources for the means of publication. The meagreness of these resources is in most cases extremely surprising when we take into consideration the wide-spread interest in science, and the ease with which associations of all sorts, except the scientific, can raise money to promote their ends. Sums are invested in a single horse or yacht race which all the scientific societies of the country could not collect in a year. There are probably not more than three or four of these societies whose entire annual income would furnish the stakes for which a pair of first-class pugilists ordinarily fight; we are not sure but that it would be an over-statement to assert that there is a single one so rich. It must be admitted that there are points of view from which our claims to be an intellectual nation look very slender indeed. We cannot but hope that the subject of aiding learned societies to publish their researches will receive more attention from our State governments in future. And we may here remark, that the more enlightened foreign governments do not confine their assistance to such societies; but also, to some extent, patronize journals of abstract science which are published by individuals. There is perhaps no one agency which has, during the last half-century, contributed so much to the advance of mathematical science in Europe as the mathematical journal established by Crelle in Berlin. Yet it could hardly have been continued, — but for the support given it by the Prussian authorities.

Were we to inquire closely why our State and general gov-

ernments have been less effectively active in the promotion of science than those of other countries, we should probably find it to be, not because there was any less disposition to be liberal in this direction, but because there is so little general understanding of the needs of science, and of its relations to the public welfare. This again may be partly due to the comparatively wide separation which exists between the political and business classes of our community on the one side, and the literary and scientific classes on the other. It is decidedly rarer in this country to see a man actively engaged in public life taking an active interest in the progress of science than it is abroad. In England many of the leading men of the nation are fellows of the Royal Society, attend its social if not its scientific meetings, and take an interest in its general welfare. Here, science is considered as forming a sort of priesthood, into whose mysterious circle a politician would hardly more think of penetrating than he would of ascending the pulpit. The only exception is seen in the reunions of the American Association for the Advancement of Science, a large and popular body, which are frequently attended by public men residing near a place of meeting.

If there really were such a priesthood of men of science, if we could show an influential body of men earnestly working together in the pursuit of a definite object, the case would be much better than it is. A united body of men, possessed of the general ability of our scientists, and working earnestly together, could not fail to make itself felt. In fact, however, we do not find in our country, within scientific circles or outside of them, a collective body or class of men taking such a deep interest in American science for its own sake as the great body of intellectual men in other lands take in the science of their respective countries. Individuals who take such an interest are numerous enough, but hitherto they have been mere isolated, inactive men, too much scattered to act in concert in any way. When we look abroad into other intellectual countries, we find the case to be entirely different. In France, in England, and in Germany there are bodies of men possessed of social, political, and money-raising power who take pride in the intellectual progress of their respective countries, and, by their united ac-

tion, exert a powerful influence in inciting scientific investigators. One or two illustrations of the wide difference between our own country and England in this regard will make our meaning clearer than pages of general description. In the latter country one of the functions of scientific societies, and indeed the function in the performance of which the widest interest is taken, is that of furnishing information respecting the progress of science, and the labors of scientific investigators. A pardonable patriotism, accompanied by a desire to please their hearers, results in the speakers or writers on such occasions dwelling principally on the labors of their fellow-countrymen. The one-sidedness of these addresses or reports not unfrequently calls down severe criticism from foreigners, on account of extravagant claims made for English science; but a sufficient answer to such criticisms is found in the fact that the utterances complained of are intended for audiences purely English, met to congratulate each other on the progress of English science, as well as of science in general.

A German would be ashamed to avow any such bias toward the labors of his own countrymen. In describing the progress of knowledge he is careful to divide the credit among those to whom it is due, regardless of nationality, desirous that no one should be able to infer the country of its origin from the names of those whose labors he describes.

In America there is no authority and no publication to which the public can look for authoritative information of this kind. It has always been the duty of the retiring president of the American Association for the Advancement of Science to make an address, but it has not generally been devoted to a review of scientific progress, either in America or elsewhere. An exception was however made at the Hartford meeting in 1874, when the officer in question delivered an extremely well-written essay on the progress of physical science in recent times. But, instead of being biassed after the English fashion, or impartial after the German, he carefully avoided all mention of the labors and researches of his countrymen. A hearer would have inferred that there was absolutely no such thing as American science. Some of his subjects, such as sound, the velocity of electricity, spectrum analysis, and astronomical research

counted Americans among their most successful cultivators, yet they were entirely ignored. If they were few in number and not so well known here as abroad, there was so much the more reason for giving prominence to their works. Such an address before the sister society of Great Britain would have been impossible, from a wholesome fear on the part of the speaker of being mobbed by the newspapers, if from no other reason. The point which we have in view, as illustrative of the greatest drawback with which our science has had to contend, is not, however, the delivery of the address, but its reception by the press and the public. The literary merits of the production were such as to secure for it a wide circulation, and some favorable comment from the press, but not the slightest notice of the way in which American science was ignored was taken in any quarter whatever. Not a voice inquired whether science was entirely a European production. Among the listeners and the readers the logical conclusion that our country had not during its whole history produced anything worth notice was accepted as too much a matter of course to excite even a passing thought.

A striking example of energy and enterprise is found in the fact that it has been reserved for the American Coast Survey to make the latest and best determination of the difference of longitude between the two oldest of the great observatories of Europe, — those of Greenwich and Paris. This determination was a mere incidental result of the determination of the Transatlantic longitude, but is not on that account the less important. Two determinations of the longitude across the Atlantic, the one from Greenwich and the other from Paris, were found to be discordant, and when the third side of the triangle, Greenwich-Paris, was measured, it was found that the discordance was due to the error of the former measurements of that side. In other words, the longitude of Paris found by telegraphing across the Atlantic from Greenwich, and then back again to Paris, was more accurate than that which had been formerly found by telegraphing directly between the two cities. Now, let us turn the shield round and look on the other side. The combined skill and diplomacy which rendered the project successful—for one can readily conceive that a little diplomacy was

necessary in such an affair — have never received the smallest recognition from our public. When the men who did the work landed on their return home, there was no committee to receive them, as there would have been had they been successful shooters; not even the most enterprising reporter found them out. There has never been a trace of the unseemly national glorification in which it is sometimes supposed that our countrymen are wont to indulge. The history and results of the expedition are duly immured in the proper official volumes, but have never made their way out of them, into the public prints, except, possibly, into the fine type of a Tribune extra. The number of people who ever heard of the work are too small to constitute a public, and the number who still remember it are yet smaller.

We must not conclude from all this that no interest in science is taken by the American people, but only that that interest does not manifest itself in such a way as to promote scientific research. The great success of several popular scientific publications, especially of the cheap ones issued by the New York Tribune, shows that there must be a large body of readers who eagerly buy that class of literature. It would be of interest to know precisely among what classes of the community these readers are divided. Taken in connection with the absence of interest in the subject shown by men in active life, there is some reason to suppose that the classes in question would be found, for the most part, to be neither the influential nor the best educated. If the statistics of the subject were attainable, it would perhaps be found that the amount of intelligence best calculated to lead men to seek after knowledge in this direction corresponded to that necessary to excite the sentiment of wonder. The entirely ignorant necessarily care nothing for the subject, while the most highly educated have been so familiar with it, at least in some of its aspects, that it has not for them the charm of novelty. Between these two classes we can easily conceive of one to whom the discoveries of the chemist and the astronomer, when stated in untechnical language, read something like a fairy-tale.

The drawbacks to the advance of science which we have described are the same as those which everywhere in our nation

have impeded the development of the highest types of thought. Our national thought lies very much on a dead level; its lowest forms are much above those of other countries, its highest below them. While the small tradesman of England is, in breadth of views, far behind the small tradesman of America, the men who aspire to the leadership of public opinion, taken as a class, diverge in the opposite way. It is not only in physical science we see this, but in the general application of scientific methods to the affairs of life. Here, as elsewhere, so long as only plain common-sense is required, we find ourselves well in advance, while we are further behindhand the further we look into questions requiring a higher form of reasoning. There are few applications of scientific method which have been of more lasting benefit to mankind than the modern political economy, and none which have done so much to diffuse American ideas of government and society. It would have been both pleasing and appropriate to have seen it a product of American thought. But, far from anything like this being the case, it is doubtful whether we can claim that an important contribution to it has ever been made on this side the Atlantic. We have a number of elementary treatises on the subject, some of them of a very excellent kind, but none of them make any pretensions to being original contributions to the knowledge of the subject. Our only writer who has ever created even a ripple on the surface of economical thought is Mr. Carey, and his methods and results are so different from those by which the science has been developed, that it is difficult to give him a place among the economists. Such a place can be fairly assigned him only by confining ourselves to the subject-matter of his researches, and ignoring his methods as unimportant. The proportion of our readers whose opinions of his system are not fully formed is so small, that a detailed criticism of that system would be of little account here, if it were not entirely out of place. We mention him because our choice lies between taking him as the great representative of American political economy, or admitting that we have no system of political economy to call our own.

As a result of our survey, it will be seen that we must form very different estimates both of the past and future of Ameri-

can science, according to the standard we test it by, and the standpoint from which we view it. When we inquire into the wealth and power of our scientific organizations, and the extent of their publications, — when, in fact, we consider merely the gross quantity of original published research, — we see our science in the aspect best fitted to make us contemplate the past with humility and the future with despair. But when we consider quality as well as quantity, we may begin to take courage, for we find that the proportion of valueless or unimportant matter is far less than abroad. A study of the case will show that this arises from the same cause to which the small amount of original research is due, namely, the fact that the rewards of real eminence are less here than abroad. The necessary result is, that Nature is studied more for her own sake here than elsewhere, and that there is less competition among men who are striving for mere position or popular reputation. To whatever extent the deficiency of such rewards may deter first-class men from original investigation, it acts much more strongly against second-class men, and thus improves the average quality of our science. If, again, we consider the intellectual energy shown by our ablest men, and, we might almost say, the national energy with which science has been pursued in certain directions during the last thirty years, it might seem entirely feasible to make our country the leader of the world in science at no very remote day. What are the conditions of such a consummation, and what are the prospects of those conditions being fulfilled? Our scientific forces present somewhat of the aspect of an army with plenty of health and courage, and possessed of ample munitions of some kinds, while totally wanting in others, because it has been fitted out by a government very liberal of its money, but totally ignorant of the wants of an army. Each company fights splendidly on its own account, but the army at large is ineffective, from the want of leadership and discipline. The public at large knows very little about the fighting, and, in apportioning rewards is more influenced by the military aspect of a soldier's whiskers, than by his deeds in battle. The basis of our requirements is a better knowledge of the wants of science among those who give money for its promotion. On the ma-

terial side we want nothing new at present; we require no increase in the number of our museums, observatories, or laboratories during the present generation. What we do want can be seen by studying the logical connection of our several deficiencies, as we have sought to point them out. We are deficient in the number of men actively devoted to scientific research of the higher types, in public recognition of the labors of those who are so engaged, in the machinery for making the public acquainted with their labors and their wants, and in the pecuniary means for publishing their researches. Each of these deficiencies is, to a certain extent, both a cause and an effect of the others. The want of public recognition and appreciation is due partly to a want of system and organization, partly to the paucity of scientific publications. The paucity of research is largely due to the want of adequate reward in public estimation and recognition; while the paucity of scientific publications is due to the want of an adequate number of supporters. The supply of any one of these deficiencies would, to a certain extent, remedy all the others; and until one or more are so remedied, it is hopeless to expect any great improvement. In other intellectual nations, science has a fostering mother, — in Germany the universities, in France the government, in England the scientific societies; and if science could find one here, it would speedily flourish. The only one it can look to here is the educated public; and if that public would find some way of expressing in a public and official manner its generous appreciation of the labors of American investigators, we should have the best entering wedge for supplying all the wants of our science. The precise form which such a recognition should take is comparatively unimportant, but the most natural one would seem to be that of medals or testimonials to be awarded from time to time to the authors of important published researches. The testimonials should have as much of a national character as possible, and should not be so few in number as to discourage the great mass of investigators from competing. Indeed, it might be well if the encouragement of beginners was made their principal object.

The other way in which help could be most effectively given at small expense is by the support of two or three first-class

journals of exact science. We say exact science, because this is the department which is worst supplied in this respect; taking mathematics at one extreme and medicine at the other, we can pretty accurately gauge the exactness of each science by the difficulty its cultivators find in supporting journals devoted to it. It may seem like reducing our thesis to the ridiculous to say that our wants in this respect could be well supplied at a cost of five or six thousand dollars per annum, and that the future prospect of the mathematical sciences in this land depend very largely on their cultivators being able to command this annual sum for the purpose indicated.

On the whole, we have not been able to present the first century in roseate colors; and while we can well contemplate the future with hope, we cannot do so with entire confidence. If we ask what this signifies, we are at once led into questions which the thinker and the man of action may discuss indefinitely, but to which no answer can be returned which will command universal assent. It is admitted that if we consider only the general excellence and success of our applied science, if we reflect how well we have utilized the discoveries made by others, by developing them into railways, bridges, telegraphs, manufactures, machinery, and weapons of warfare, we have every reason to be well pleased with our success. Is this not enough to satisfy us? The standing of nations in the world depends solely on the effectiveness of their cannon, and will long continue to do so; the intellectual nations are foremost only because they know best how to forge cannon. Is it, then, worth our while to set up any other standard to measure ourselves by? To take a little higher basis for our inquiries, the fundamental idea of our social system is the greatest happiness of the greatest number, and if the intellect of the masses is developing satisfactorily, can we not dispense with philosophers of every description? Suppose the higher types of exact thought should disappear entirely from among us, is there any danger that sudden calamity would overtake us, or slow decay undermine our national life? Or if, ascending above all considerations of mere utility, we inquire into the intellectual status to which, as a nation, we are entitled, ought we to draw any unfavorable conclusions from a deficiency in the higher

forms of thought? It may be claimed that the number of men in each generation who can make a permanent impression on the literature, science, or art of a people are necessarily very few in number, so few, in fact, that their presence or absence is hardly felt in estimating the average intellect of the nation. The fact that the score or so of men necessary to enable our country to make a brilliant intellectual showing may not be found, does not in any way militate against the average intellect of the twenty or thirty millions who live in it. From this point of view, a nation in which every one, from the legislator to the day-laborer, could read and appreciate Plato, would be, intellectually, the greatest nation of the world, though it could not show the beginning of an intellectual life peculiar to itself. A community in which every man had a good grammar-school education would, from the same standpoint, be the best educated in the world, though not a member of it had ever seen the inside of a college.

To dispute the question what intellectual status should be assigned to communities such as these would be were logomachy, and to question the desirableness of a state of things in which every member of the community, however humble, should be thoroughly educated, would be running counter to that idea of the universal diffusion of the highest means of happiness on which our society is based. Still, while in no way decrying a state of society in which every ploughboy could read Plato, we must point out that all the wants of our civilization would not thus be satisfied. In the complex operations of that civilization we may see the same necessity of a division of labor, and the same absence of necessity that any one man shall be able to do everything, that we see in the operations of mere industry. In a factory, the highest efficiency is reached when each kind of productive faculty is employed in the proper proportion, from the skill of the single managing head to that of the thousand operatives. In the same way the proper advance of our civilization requires the harmonious co-operation of minds of many orders, each present in the proper number. Its operations are most effectively performed when every member of society is able to perform his peculiar duties to his fellow-members in the most effective

way, and in which some one is found to perform every function necessary to the progress of the whole. However desirable it may be that each individual should be able to do as many things as possible, the requirements of society at large do not extend beyond the limits we have indicated. That nation will advance most rapidly in which the statesmen have the strongest intellects and the navvies the strongest bodies. There is no more need that the latter should have the heads of statesmen than that the former should be able to handle the spade.

We may now see that while the neglect of philosophic research which we have pointed out may not diminish our judgment of the average American intellect, it does indicate a great want of one of the factors of our civilization. Scientific research, and the presence of those ideas on which civilization is founded, are so closely connected, and each is so productive of the other, that they cannot be separated. The fact that a very small number of investigators are sufficient to build and maintain the science of a country, should not blind us to the importance of their work. If we could count the men whose death in their cradles would have resulted in the continuance of the Dark Ages to the present time, the original minds whose thoughts have leavened our whole lump, we should find it to be fearfully small. The fact that their number is small, and their influence exerted in ways so occult to the ordinary mind that they cannot be traced, naturally leads to a general under-estimate of the importance of their functions. In visiting a factory, the superficial observer sees only the outward operations of the establishment, and may be easily led to believe that mechanical labor is the only important agency in its inception and continuance. The business skill of a few men, without which a large fraction of the operatives might have been running the streets in idleness, or engaging in less remunerative labor, lies far in the background of his field of vision. Still further back lies the skill of the inventor who devised the mechanical operations he witnesses, while the genius of the physicist who discovered the natural laws on which the invention is founded is entirely beyond his range.

- Not dissimilar are the views of the various elements of our social organization taken by those whose breadth of knowledge

and depth of understanding are not such as to enable them to trace all the causes at work in society. We are familiar with a class who see nothing in society, or at least in its industrial operations, beyond the work of the physical laborer. Another class, of a wider range of vision, can see the functions of the organizer and the capitalist, without whom the means to make labor effective would be entirely wanting. The class who can fully grasp the functions of the purely intellectual laborers is yet smaller. Not because intellectual laborers are entirely unappreciated by the public at large, but because an incorrect view is taken of their functions. To the average intelligent citizen philosophical thought and scientific research, when not immediately directed to some obvious practical end, are mere ornaments, the trimmings in fact of the social edifice. They may be ornaments with which he would not willingly part; still it is only as ornaments that he values them, and if something must be lopped off, he is too apt to let them go first.

Among the fallacious ideas which pervade society, there are none the dissipation of which is of more importance than the one thus formed of exact thought. No want from which our nation suffers is more urgent than that of a wider diffusion of the ideas and modes of thought of the exact sciences, and nothing is more fallacious than to look upon the results of such thought as purely ornamental. A large fraction of our public occupations consist in examinations and discussions of social phenomena, in which no certain result can be obtained without a logical exactness of investigation to which every-day life is an entire stranger. Each generation is determined to examine for itself the foundations of society and of government, and is strongly disposed to tear away as rubbish everything which seems to impede progress and of which it does not see the utility. To what dangers may we not be exposed if the renovation is undertaken by unskilled hands, directed by men who are not only ignorant of social laws, but incapable of exact reasoning of any kind whatever! What is required to insure us against disaster is not mere technical research, but the instruction of our intelligent and influential public in such a discipline as that of Mill's logic, to be illustrated by the methods and results of scientific research. The present great move-

ment in favor of scientific education will be productive of one excellent result, if it serves to direct the minds of the rising generation toward the methods of science, and the ways in which those methods must be applied to the study of societary laws rather than to the technicalities of science, or to its practical applications to the ordinary operations of industry.

The most superficial observer cannot fail to see that there is some want of the kind we are indicating to be filled. He sees statesmen, orators, newspapers, and magazines discussing the currency question by hundreds every day. He knows that their words fall dead upon the ear of the public, for the simple reason that the speakers and writers cannot convince the public that they have any real knowledge of the subject, or any clear understanding of the questions involved. In this way the entire ineffectiveness of the great mass of the arguments is quite clear to him. What he sees very dimly, or not at all, is that the deficiency arises from the want of any systematic logical method in the processes by which the disputants reach their conclusion, while the way in which such a method is to be mastered lies quite beyond his vision. If he sees the way, he certainly will not consider philosophic thought as a mere ornament.

From this point of view science presents itself as a system of national liberal education, to be maintained for the same reasons that we maintain the liberal education of the individual. Without it we shall suffer precisely as the individual suffers when he follows a profession of which he does not understand the first principles. We must look to the cultivation of science in its broadest fields to do for the future of the nation what a knowledge of mathematics does for the engineer, of chemistry for the physician, or of mechanics for the architect. Its function is not merely to furnish empirical rules for our guidance, but to shed the brightest possible light upon a difficult path, in which we are to make our way by our own best judgment. With it, the path may sometimes be hard to find; but without it, we must grope entirely in the dark.

SIMON NEWCOMB.

ART. IV.—ECONOMIC SCIENCE IN AMERICA, 1776-1876.

THE century which has elapsed since our independence was declared exactly covers the period for which the science of political economy has been a systematized branch of human learning and research. Before the publication of Adam Smith's "Wealth of Nations" in 1776, we have, indeed, discussions of detached topics, and even attempts here and there to throw the whole into connected form; but, after all, the economist finds the foundations of the science, as it stands to-day, laid deep and solid for the first time by Adam Smith; the great men who have since carried forward the work have declared themselves his followers, and in developing and extending the science have kept to the lines of discussion which he laid down with such vigor and insight a century ago.

The science which is thus coeval with our nation has been studied with zeal and with measurable success in most parts of the civilized world. New principles have been evolved, tested by the abundant experience of modern industry, and added to the body of ascertained truths. Unceasing discussion has enforced constant revision of the whole work, with increase of firmness and consistency as the issue of every threatened revolution. The field properly occupied by the science has been surveyed and its limits determined, even to the disappointment of over-ambitious economists or of a too expectant public. No other moral science has equally engaged the attention of public men, and no other, it is safe to say, has equally influenced public affairs, whether by the correct or the incorrect application of its principles. Nor has any nation had the monopoly of honors gained in this new pursuit. Adam Smith, Ricardo, and Mill have secured the leading position for England; but France and Germany, and perhaps Italy, have made contributions of lasting importance to the subject, and have never been without their full proportion of active and judicious investigators. Notwithstanding the priority of England in some remarkable advances, the centre of interest in economic discussion has not always rested with her; it has at times been

in France; it is now, probably, in Germany. In short, the science has been made a common possession by the efforts of all.

When we come to inquire what part our own country has taken, and what contribution it has made in building up this science, we are struck at the outset by the fact that the growth of the United States has been a circumstance of prime importance in the economic history of the world during the century. It must be placed in the same rank with the brilliant succession of discoveries in the industrial arts, or with the extensive improvement of government and social organization, as one of the half-dozen great influences which have changed the face of the civilized world. Without entering into the details of a comparison, to which every reader is likely to have his attention sufficiently drawn during the present year, we may here note a few of the facts which have given to the development of this country so great an influence upon that of the rest of the world. Beginning with the statement of mere area, the organized States of the Union now occupy a territory larger than the whole of Europe, outside of the Russian Empire. The improved land of these States, measuring 295,000 square miles in 1870, cannot be much less than the total improved surface of England and Ireland, France and Prussia, together. Of this vast field of production, we may fairly say that the whole has been brought into the circle of international exchanges and added to the available resources of mankind within this century, so insignificant were its relations with the rest of the world a hundred years ago. Moreover, the products to which this territory is adapted by nature are such as have a singularly direct and important bearing on the welfare of other countries. How great an industrial revolution has been wrought by cotton, and what the nineteenth century would be without that fibre, of which we produce more than half of all that comes to the markets of Europe and America, it would be hard to say; but the memory of our civil war is still fresh enough to tell us what universal disaster must follow the interruption of our supply, and what a chain of consequences, involving the well-being, the peace, the institutions, and even liberty of millions of men, have followed from the addition of the cotton-plant to

the agricultural products of the South. Of different but hardly inferior significance in the economy of the world is our supply of gold. The astonishing expansion of industry and commerce for which the close of the wars of Napoleon seems to have given the signal, which has stimulated and been stimulated by our growth, is one of the great phenomena in the history of mankind. This expansion, however, must have been checked at the most critical period, had not fresh discoveries of gold supplied the enlarged medium of exchange required by the new scale of transactions; and of this series of discoveries, the second in importance in recorded history, California made one of the chief and also the earliest. From that time the United States have continued to be the first in importance of the sources of gold; and were this our only economic relation to the rest of the world, the influence of our rise as a nation upon the general well-being must be admitted to be direct and powerful in an extraordinary degree.

Tobacco, one of our earliest staples for export, has become not only an article of great moment in the revenue systems of several leading nations, but stands in a peculiar relation as one of the few luxuries which enter largely into the consumption of the poorer classes of all countries, thus acquiring, as it were, a social importance far beyond its simple pecuniary value. And of tobacco, the United States are now the leading source of supply for England, France, and Germany. To turn from this to petroleum, one of our newest staple articles of export, and now the third or fourth in importance on our list, it may be doubted whether to the majority even the ludicrous incidents of the discovery do not continue to be more familiar than the reflection that by the timely introduction of a cheap and excellent artificial light an immense boon was conferred upon a large part of the civilized world. And last among those economically important natural products to which we shall refer are the cereals. Our capacity for the supply of these, although of secondary importance in the markets of other countries, has made it possible for us to sustain an increase of population which, for years, has been cited as the standard example of maximum natural growth. This abundance of cheap food has also made it for our interest, simul-

taneously with this rapid natural increase of numbers, to invite from the Old World an immigration on a scale so vast as to constitute in itself an economic phenomenon of no mean order, the result being the relief of the older countries from a serious, if not dangerous, pressure of numbers, by the transfer to our shores of more than nine millions of people, or a number equal to the whole population of Great Britain at the date of our independence. And the population thus established upon our soil, whether native born or of immediate foreign extraction, has proved to be no inert mass, but, from the start, has been active and resolute to a fault, in improving all material advantages and in pushing its way to a place among the great powers of the modern world. Mineral resources of remarkable variety, and of extent not even yet fully measured, together with fortunate conditions of physical geography, have seconded these efforts and have often enabled us to enter into sharp competition with the longer-established industries of Europe. To excellent natural facilities for communication has been added a railway system of 75,000 miles, being little less than half the railway mileage of the world, and going far to neutralize the disadvantage of great distances, which, in some directions, threatened to hamper our growth. A mercantile marine, which even in its present depressed condition is not far short of the greatest on the ocean, and is of nearly double the magnitude of its next competitor, helps in part to connect this vast internal network with the general commercial system of the world. So great, however, is the volume of our exchanges with other countries, that scarcely one third of it is transported by our own shipping. With the mother-country, especially, our commerce has grown, until it overshadows that of every other nation with whom she carries on a trade either of export or of import. What a growth this has been is shown by the fact that the steam-tonnage now annually cleared for New York alone from the United Kingdom exceeds the total tonnage of ships annually cleared for all parts of the world down to the close of our Revolution.

In the process of development indicated by these few leading facts, the United States, by a natural and steady though rapid movement, have taken among commercial nations a place not

lower than the second, and likely soon to become the first, — the second or first place, it must be remembered, in a changed world, and in a scale of magnitudes hardly comparable with those of 1776. We have advanced to the front among competitors who were themselves all rapidly advancing. But, with improved facilities for intercourse, the economic ties between countries have been vastly multiplied and strengthened, and to hold a leading position in commerce now implies a direct connection with the progress of others and with their material well-being, immeasurably closer than has ever existed before. Every fresh conquest over nature made by us belongs to the family of nations also, and every loss suffered by us is also their loss. Infinite mutually dependent interests unite us with Europe and with the very antipodes. Every pulsation in the financial system is felt alike on each side of the Atlantic. A crisis in London has its instant counterpart here, and the great revulsions which periodically sweep over the commercial world may begin, almost as chance may dictate, in New York or in Vienna.

The value of the triumphs of material development achieved by the United States is not to be underrated. They represent but one side of human progress, but their influence on interests of a higher order is immediate and powerful. The world cannot yet dispense with the stimulus which the search for wealth gives to every science and art, nor forego the support which the increase of wealth gives to some of the pursuits and institutions which most elevate and ennoble civilized life. Doubtless Carlyle is right when he says that "America's battle is yet to fight. . . . Their quantity of cotton, dollars, industry, and resources I believe to be almost unspeakable; but I can by no means worship the like of these." But these have been one of the great factors in producing whatever of progress and hope the world has gained in our age. If not to be worshipped, they are still not to be despised, for from them comes, as must be admitted, much that is itself worshipful. Even our merely material growth may then fairly be a subject of pride, so long as we remember that it is itself only the means for higher ends.

Standing in this relation to the general advance in wealth

which the world has made, it might have been thought in advance that the United States would be prompt in investigating the laws which govern all economic progress. The philosopher who could have foreseen in 1776 the amazing career of the weak and scantily peopled Colonies which then took their place as an independent power, might easily have been persuaded that the new science then having its birth and treating of "the nature and causes of the wealth of nations," would be taken up by this people with especial animation and success. "Here," he might have said, "is the beginning of an inquiry into the nature and causes of that which will chiefly occupy the new nation. Others in their maturity or decadence may prosecute this inquiry in the hope of discovering the means of escape from impending evil; this people will pursue it with the enthusiasm of strengthening youth. Success in this investigation and a wise application of its results will account for the splendid triumphs in the acquisition of material wealth, which are to distinguish the first century of independent national life." How far the imagined anticipations of our philosopher have been verified, and the reason for their failure so far as they may be found to have failed, is the object of the review on which we now enter.

The condition in which the breaking out of our Revolution found the study of economic science in this country is well exemplified by the writings of Franklin. Of all our public men of that period he was the one whom we should perhaps most naturally expect to find dealing with this class of subjects, and, if not profoundly investigating the causes of phenomena, at least deriving from observation and reflection sound and consistent rules for practical guidance. His activity in the political discussions of more than half a century, and his natural fondness for every inquiry respecting material well-being, seem to mark him out as the American who must deal with political economy if any one did, and the one who could rise to the level of the national thought in economic speculation, if he did not soar much beyond it. Franklin wrote upon topics of this class from his twenty-third year, and probably wrote as well in his twenty-third year as he ever did. The questions of currency then raised in every Colony by the

paper issues of the colonial governments he had occasion to treat of at several different times. But the support which he gave to issues of that kind rests on no well-defined systematic body of opinions; indeed, his discussion of the continental currency, in some of his letters, raises questions as to his clearness of perception in morals as well as in political economy. He is quoted with admiration by writers of the protectionist school, and he might equally well be quoted by their opponents. He was in fact a man of expedients rather than principles, often sagacious in dealing with immediately practical questions, but satisfied with the crudest speculations as to the operation of causes in any degree remote. His economic writings were edited for Mr. Sparks's collection of his works by the late Judge Phillips, himself an economist of no mean capacity; and the annotations of the editor afford ample evidence that he found it no easy task to present with respectful comment and due admiration the mass of ill-digested reasoning placed in his hands. That Franklin read much of the writings of others on questions of political economy is not to be inferred from his works. Smith's "Wealth of Nations" is cited in a paper on the increase of wages in Europe likely to be caused by the American Revolution, written shortly after 1780, when Franklin was abroad; but the citation is made to settle a fact, and not to further the discussion or elucidation of a principle.

Of Franklin then it must be said, that he not only did not advance the growth of economic science, but that he seems not even to have mastered it as it was already developed; and little more can be said for any of our public men or writers during the period of Franklin's activity. We find no one well versed in economic theory and entering upon speculative inquiries of real value until we come to Alexander Hamilton. That great man, whose remarkable career was finished at the point when most men are just ready for action, was a reader and inquirer in political economy in his twentieth year. In his twenty-fifth year, in such leisure as the camp of the Revolution afforded, he matured a scheme for a Bank of the United States, and became a correspondent of Morris on that subject. And, finally, at the age of thirty-four, he produced,

as Secretary of the Treasury, his great reports on the Public Credit, on a National Bank, and on Manufactures, the most powerful and comprehensive discussion of the national finances ever made under our government, and the subject, it may be remembered, of one of Mr. Webster's noblest periods. Those reports bear the evidence throughout of much reading and reflection upon the experience of nations, and of careful meditation on the speculations and theories of previous writers. Examination of the report on Manufactures, in particular, will show that in some parts of it, in his selection of topics and even in the order in which they are marshalled, Hamilton was influenced by his familiarity with Adam Smith. The writings of the French economists were probably known to him at this time, as they certainly were a few years later, and some of the doctrines of this school, as well as Smith's concessions to them, received from him a successful refutation. Both the knowledge of economic questions and the power of dealing with them exhibited by Hamilton in these discussions warrant us in setting him down as a writer who, under other conditions and freed from the pressure of public business, might have been expected to make some positive contribution to the development of economic theory. But his few crowded years left him little opportunity for such pursuits, and it would now be hard to say that he left any impression on the thought of the world, by his dealing with this subject. His reports have continued to be the arsenal from which the advocates of special measures have again and again drawn forth weapons now well worn; but systematic political economy cannot be said to owe to him any recognized principle, any discovery in method, or indeed any influence save the stimulus which his example must always afford to the student of financial history.

If Hamilton did not permanently influence the economic thought of the world, there is certainly no other statesman of that period for whom such a distinction can be claimed. Among Hamilton's great contemporaries none followed the discussions of the new science with more interest than Jefferson and Madison; but neither of these statesmen was comparable to Hamilton in his mastery of the subject. Jefferson had that fondness for it which he had for all philosophical

speculation, kept himself informed as to all new publications abroad, was instrumental in bringing some of these before the American public, and corresponded with some of the leading French economists of his day; but in his own discussions of economic questions it is difficult to find any firm ground of logical principle, and impossible to find any addition to what had been previously ascertained and better comprehended by others. Madison, with interests less diffuse than Jefferson's, had a much firmer hold upon this subject. He appears to have followed its current literature with close attention, and to have reflected upon principles and to have applied them, with great although not uniform force, in his reasoning upon public questions. It is interesting to find Madison—and, indeed, Jefferson also—giving in an early adhesion to the doctrines of Malthus on population, and defending them by arguments from the experience of the United States. But Madison could make as little pretension as Jefferson to having added any results of original investigation to the work of others. His merit was not as an economist, but as a statesman who conscientiously prepared himself for the duties of public life by following this necessary branch of a statesman's studies. Of the other public men of this early period of our history we need mention only Robert Morris and Gallatin; and of these eminent practical financiers the latter only has any claim to notice in connection with scientific theory. The memorial drawn up by him and presented to Congress, in 1832, from the Philadelphia Convention in favor of tariff reform, is a full and strong statement of the arguments against protection, and exhibits familiarity with the results of theoretical discussion, as well as with the practical side of the question; but the complete oblivion which now covers the document shows how narrow and temporary is the influence to be credited to it. His pamphlet on "The Currency and Banking System" is also a comprehensive and sound discussion of these topics, but has ceased to be much referred to, except for historical purposes.

Of the great men of the next generation, Mr. Calhoun was doubtless well qualified by nature for this field of investigation, and displayed a strong inclination to enter upon it; but, unhappily, every mental power and every pursuit at last became

subservient with him to a narrow sectionalism, which finally frustrated all hope of sound fruit from a laborious life. The electric power with which Mr. Clay acted upon the emotions of men was not coupled with any special capacity for the research of principles; and while his name is inseparably connected with the "American system," his argumentative defence of that system is practically forgotten,—so much easier was it for him to give vogue to an effective name, than to give a scientific basis to the thing itself. Mr. Webster discussed with great power many questions involving general principles of political economy, but he never cared to apply his intellect to the foundations of the science. Indeed, in one of his letters he says: "I give up what is called the 'science of political economy.' . . . I believe I have recently run over twenty volumes, from Adam Smith to Professor Dew, of Virginia; and from the whole, if I were to pick out with one hand all the mere truisms, and with the other all the doubtful propositions, little would be left." Whatever else may be said of this passage, it absolves us from the necessity of further explanation of Mr. Webster's failure to contribute to the world's advancement in economic science. Of the contemporaries of these three great men, the other champions on whose words listening senates once hung, in the fierce contest over tariff and bank, no name can now be recalled as having any claim to connection with the development of the science of which we speak. Lowndes, Crawford, Wright, Berrien, McDuffie, Benton, and the others may yet shine in our political history, but they are unknown in political science.

And if we examine the roll of statesmen of the generation which closes our century, what better success is met? We find, indeed, the names of some men who have skilfully managed interests of vast magnitude, and of others, not in great number, who have shown a competent scientific knowledge; but we may safely challenge the mention of one who has added to the stock of economic principles with which the world was already acquainted, or has given any essential assistance in their elucidation. As a class our public men have confined themselves, like Franklin, to the sagacious application of rules of thumb. So far as they have dealt with the science at all, it

has been made for them by others; they have not aided in making it. Indeed, the promise held out by Hamilton's great example, of the thorough examination of questions in the light of ascertained principles, has seldom been fulfilled, even by our highest officers of administration. Few things, in fact, are more noticeable in our recent political history than the extreme fragility and brevity of the reputations acquired, either in administration or in legislation, by most of our public men who have assumed to deal with this class of subjects.

If we turn from the statesmen to the scholars of the United States, the result is not more satisfactory. Down to the year 1820 no American produced any treatise on political economy which the world has cared to remember. Such books of that period as come to light, upon industrious search in forgotten corners, are crude, unsystematic, full of empirical notions, and are now intellectually obsolete. The philosophical study of the subject, to which Adam Smith gave an impulse abroad, was, in fact, late in making any public appearance on this side of the Atlantic. The increasing interest in it is shown by three editions of the "Wealth of Nations" (Philadelphia, 1789; Hartford, 1811; *ibid.*, 1818), and by the reprinting of Ricardo's great work (Georgetown, 1819) only two years after its original publication. But when we remember that on the other side of the Atlantic this period was marked by the appearance of works so important, and in some cases of such lasting influence, as those of Malthus, Say, Ricardo, and Sismondi, the poverty of American thought upon the subject is striking, even if we allow, as we must, for the infancy of the country and the consequent small number of its literary class. In the twenty years which followed the period of which we have just spoken, a tolerably rapid succession of treatises by American authors was given to the public. Raymond (1820) brought to the discussion zeal and ingenuity, but such looseness of method and want of precision of ideas as to defeat his efforts and destroy the value of his work, — which, indeed, from its confusion of definition and want of system, seems a late growth of the generation which preceded Smith, rather than one of that which followed him. Alexander H. Everett, fresh from the influences of a long residence in Europe, and of personal inter-

course with some of the leading economists of the world, published (1822) an answer to the essay of Malthus on Population, which holds a place among the best of the many attempts made in this direction; but his dialectic skill was not able even to supply the opponents of the Malthusian doctrine with a common standing ground, and still less to prevent the doctrine from being accepted in its essentials by the great majority of economists who have followed, and even by many who imagine that they reject it. Dr. Cooper, of South Carolina, issued a treatise (1826), of which McCulloch says that, "though not written in a very philosophical spirit, it is the best of the American works on political economy that we have met with,"—an encomium measured with judicious care. Dr. Cooper's chief success, in fact, was in reproducing in systematic form the results attained by the English economists, with whose works he was well acquainted; but he did nothing in original speculation. Willard Phillips produced a treatise (1828) in which, treating the whole structure of Malthus and Ricardo as unsound, he sought to take up the subject where Adam Smith had left it. He treated it with an abundant knowledge of commercial and industrial facts, and with a mind well trained for speculative inquiry; but it was complained, even by a friendly contemporary critic, that he reared nothing in place of that which he sought to remove. Rae's book (1834) has been pronounced by high authority to be a valuable discussion of the subject of production; but as the work of a Scotchman settled in Canada, and originally intended for publication abroad, we can hardly count it as an American contribution. President Wayland's book (1837) is the only general treatise of the period which can fairly be said to have survived to our day; and this, it must be admitted, owes whatever value it has to its manner of presenting for easy comprehension some of the leading English doctrines,—of which, however, it may be doubted whether the author ever fully recognized the bearing. Vethake's treatise (1838) is now little known, its more valuable portion having served its purpose, like the works of Cooper and Wayland, of bringing before our public some of the results, at that time unfamiliar, which had been reached by writers not then well understood in this country. Other

writers of this period, like Dew, Newman, Tucker, and Potter, can be dismissed even more summarily, so transient was their influence, and so completely forgotten are their works.

The years which followed from 1840 down to the war for the Union were for natural reasons much less prolific of works on political economy than the period just noticed. The stimulus given to the study of the science by the extraordinary advances made in it by the great English investigators had ceased to be active; questions of currency, as we shall presently see, had fallen into a subordinate rank; the tariff question, after a furious party struggle in which all considerations of political science were lost sight of, seemed to have been settled; and the great sectional controversy began to fill all minds, to the exclusion of every other public question. A few text-books appeared, recasting familiar material; as, for example, the well-known treatise of Professor Bowen (1856), in which he threw into connected form a long series of articles and lectures produced by him in the preceding ten years, and Bascom's convenient *résumé* of economic theory (1859). To these we must add Stephen Colwell's work on "The Ways and Means of Payment" (1859), the production of an author who had few equals as regards his acquaintance with economic literature, but who in this, his chief work, appears to have been led into unprofitable subtleties, which have failed to influence appreciably the opinions or studies of others. Beyond these works, however,—and omitting for the present a writer whom we must notice more at length further on,—our literature now has little to show in this department except pamphlets and occasional essays of limited interest, for the years in which the wonderful phenomena of the California discoveries were occurring in our own country.

In the period which includes and follows the war we have a few works like that of the late Amasa Walker (1866), with its earnest but not always conclusive discussions of currency, and the vigorous treatise by Professor Perry (1866),—both designed for use as manuals, and claiming but little attention as statements of original thought. In general it must be said of the last ten years, that while they have witnessed a marked and salutary revival of interest in economic discussion, the

most absorbing questions which have caused this revival have been quite too rudimentary to lead to fresh development of principle. Whether we shall have more paper, or shall return to specie, are questions calling not for research so much as for skill and force in rhetorical treatment, which may carry axiomatic truths into unwilling or otherwise unreceptive minds. It is true that the question whether our fiscal policy should look to continued protection or to ultimate freedom of trade involves more really controversial matter; but this has been so far overshadowed and complicated by the question of currency, that it neither has produced nor seems to us likely to produce for some time to come any marked originality of investigation.

It might perhaps have been enough for our purpose, if, instead of passing in review this series of American writers on political economy, we had simply called attention to the fact that, with few exceptions, the works produced in the United States have been prepared as text-books by authors engaged in college instruction, and therefore chiefly interested in bringing principles previously worked out by others within the easy comprehension of undergraduate students. The success with which this work has often been done and its value, we shall not question; but clearly it is not by such means that discoveries in abstract science are likely to be made or to be announced to the world. It should occasion no surprise, therefore, that of the considerable list of American writers on the subject, so few have produced any impression out of our own country, or have been able even at home to give to the study any strong impulse. Not only has no American school of writers on political economy been established, if we except that which we are about to notice, but no recognized contribution to the development of the science can be pointed out in any way comparable to those made by the French writers, or to those which the Germans are now making.

The writer to whom we have referred as offering in some respects a possible exception to these general remarks is Mr. Henry C. Carey. It cannot be said that Mr. Carey has not engaged attention outside of his own country, for his works have been translated and circulated in nearly every important

language of Europe, and Mr. Mill on several occasions pays him the distinguished tribute of singling him out in an especial manner from a throng of opponents. Nor can it be said that he has won his place by following others, for his system aims at nothing less than revolution in the leading doctrines of political economy, and he certainly bids fair to stand next to Malthus and Ricardo as a provoker of controversy. This exceptional position has been attained as the result of a long and laborious career as a writer. Mr. Carey's first publication, in which he appears as an advocate of free-trade, with an economic theory based on a new doctrine of value, dates from 1835. His denial of Ricardo's doctrine as to the law of production from land and his conversion to the theory of protection followed a dozen years later. The final elaboration of his system in opposition to what he is fond of calling the British school appeared ten years later still, in 1858; and hardly a year has passed since without some addition to the long line of his works on this class of subjects. This series of publications has had a distinct and not inconsiderable effect. Bastiat not only borrowed Carey's law of value and presented it in a brilliant paraphrase, but seems to show Carey's influence throughout his eager search for harmonies in the economic world. In Germany, where the way was no doubt prepared for him by the labors of Frederic List, Mr. Carey has found a large class of readers, whose numbers are explained by Dr. Dühring of Berlin, the most active German writer of this school, by pointing to the American author's early sympathy with the Germans and his prediction of their intellectual leadership of the world; although a more substantial ground of explanation might be found perhaps in his more than German readiness to refer to the co-ordinating power of the state, as a specific for social or economic discords.

But while we may admit that the system elaborated by our countryman is likely to be, as Dühring says, "a ferment of the strongest kind" in the discussions of this generation, we must not forget that to lead a school is not necessarily making a contribution to the science. Not much of Mr. Carey's work, we are confident, will be found wrought into the political economy of the future. His doctrine of value gives epigrammatic

form to some important general truths, but does not supersede the usual conception of value as the ratio of exchange or purchasing power of commodities, or enable us to dispense with the use of that conception in dealing with a wide range of questions, both theoretical and practical. His doctrine as to the law of production from land, which is presented in fundamental contradiction of the English school, is chiefly a statement as to historical development, which does not touch the essential point of Ricardo's theory; and while he denies the whole of that theory and the law of Malthus as to increase of population, his reliance upon a conjectured physiological law as an ultimate limit to the increase of numbers, shows the difficulty which he has found in avoiding as a logical conclusion the tendency to increasing pressure upon the means of subsistence pointed out by those writers. And it is upon his speculations as to value, production from land, and population that, as we apprehend, his claims to be regarded as a permanent contributor to the science would be rested,—not upon his later discussions of protection, the major part of which follows from the three lines of speculation just named, nor upon his theorizing as to money, in which his priority might be disputed by a series of writers, from John Law down. That Mr. Carey, by his ardent attack, compels a wholesome revision of positions and arguments there is no question; that he has checked some incautious generalizing we have no doubt; but that he has overturned any previously accepted principle of leading importance, still more that he has established any new and valuable principle originated by himself, is a claim which, in our judgment, cannot be made good.

In thus recognizing Mr. Carey's position as a writer of exceptional importance, we are confirmed by observing that he is the only American author noticed by Dr. Roscher in his exhaustive *History of National Economy in Germany*. But it must be admitted, we think, that Mr. Carey's following, in our own country, has had a more local character than might have been expected from his wide reputation. The work of E. Peshine Smith (1868), Dr. William Elder's "*Questions of the Day*" (1871), and Professor Thompson's "*Social Science*" (1875), are representative, not only of the views of his school,

but almost of its geographical limits in the United States. The conclusion at which we have arrived, however, as to Mr. Carey's own position with respect to the development of economic science, frees us from the necessity of considering more particularly those writers who have followed but have not advanced beyond him.*

The general result then to which, as we believe, a sober examination of the case must lead any candid inquirer, is, that the United States have, thus far, done nothing towards developing the theory of political economy, notwithstanding their vast and immediate interest in its practical applications. It is not an agreeable duty to declare a conclusion so little flattering to patriotic sentiment ; but to arrive at it as a truth forced upon the mind by the history of economic science is still less agreeable. And what explanation, it will be asked, is to be given for a failure apparently so much at variance with what our material condition, the general intelligence of our people, and the growth of intellectual activity among us, might lead the inquirer to expect ? The answer to this question will be easier, if we briefly consider the circumstances under which one of the leading public questions having an economic bearing has been discussed and acted upon in this country.

The question of paper currency, when it first came before the people of the United States for settlement under the present Constitution, in 1790 - 91, was already complicated in a manner which made its thorough investigation doubtful. Whether such paper should be issued at all, whether it should be regulated by the general government or the States, and whether the proposed national bank should control the paper issues of the country, or should be content with simply pouring its own into the general mass, were questions the decision of which was in a manner forestalled by the existence of banks of issue established several years before under State

* It is impossible to make any serious mention of Mr. Greeley as a writer on political economy, although his name is sometimes included in a full catalogue of Mr. Carey's school. And we have not included the name of Mr. Colwell, because, while he, no doubt, agreed with Mr. Carey in many points, we observe that in a note to the translation of List's "National System of Political Economy," p. 335, he more than intimated dissent from Mr. Carey's theory of rent ; and Mr. Carey's system, with that theory struck out, would not be recognizable by its author.

authority, and not easily disturbed by the new government. And the approach to the fundamental question as to bank paper was still further embarrassed by the political turn which the discussion took in its early stages. The advocates of a liberal construction of the Constitution, and those of a strict construction, arrayed their forces for battle over this question as soon as it appeared. Nothing, indeed, could be more natural; but nothing could be more unfortunate for the proper settlement of an economic problem. All scientific questions were made subordinate to the political question at the outset. The party who dreaded to see the national government too strong were committed in advance in opposition to a measure which for them was part of a general political system, and in large sections of the country hostility to the bank became hostility to banking. And the division of opinion upon this line, rather than upon abstract principle, was promoted by the supposed opposition of interests between the commercial States and the agricultural. Of thirty-nine votes for the bill chartering the first Bank of the United States, all but six were from States north of the Maryland line; of the twenty votes against the bill, all but one were from States south of that line. How far the political side of the question of banking overshadowed the scientific is clear from the manner in which it was discussed by Mr. Jefferson, from whom one of the great parties took its tone for years. That statesman's treatment of the question of currency, and, indeed, of other economic questions of which the relations happened to be political, would to-day be universally recognized as beneath the level both of his intellect and his knowledge. His intense democracy, and his extreme dread of any proposition based on English models or English opinions, incapacitated him for any genuine discussion of this subject in its larger aspects. And to what length the ignorant bigotry of many of his followers carried the hostility to banks, which was instinctive with him, the political history of our first half-century amply testifies.

The prudence and good judgment with which the first Bank of the United States was conducted are now seldom questioned; and the real service which it rendered, in its twenty years of existence, towards giving a stable foundation for our

finances, at a time when the State banks and their issues were in actual chaos, is not more doubtful. But the Bank owed its existence to the Federal party, and with the downfall of that party the renewal of its charter became impossible. Late in the War of 1812, an empty treasury brought the government of the day to the support of a new bank charter, as an expedient of the moment. Banks, said Mr. Webster, in sober admonition, cannot give the means of supporting an expensive war. "They are useful to the state in their proper place and sphere, but they are not sources of national income. The streams of revenue must flow from deeper fountains." But so urgent was the demand for a bank, on grounds of merely temporary policy, that Mr. Madison, who had opposed the charter of the first Bank of the United States, vetoed, as dilatory, one bill chartering the new bank, because it required the institution to begin on the basis of specie payments! Happily, the return of peace settled this weighty question for us, and the second Bank of the United States was chartered, to begin as a specie-paying bank, on the first day of January, 1817.

But whatever influence the new Bank of the United States might have had in directing the public mind to broader views of the question of currency, had it been left to itself and had its management continued to be sound, its circumstances did not allow such influence to be exerted by it. Political hostility was excited against it, and, six years before the expiration of its charter, war was formally declared against it by President Jackson. We, of the present generation, are in some respects losers from the total and probably final disappearance of that personal loyalty to great leaders, which marked our politics forty years ago and gave to them a glow of generous enthusiasm; but in some respects we are also gainers. The overwhelming individuality of one man is not likely again to convert a high question of economic policy into a mere struggle between "Jackson and the Bank," in which the rival clamors of personal adherents and personal foes shall drown all considerations of scientific or political principle. Such, however, was the ignoble character of the contest which led to the final overthrow of the second Bank of the United States. The financial revulsion which followed that contest, and was

in part its natural consequence, established for years in the minds of a great political party the notion,—it could hardly be called an opinion,—that paper currency of any sort is sure to work ruin. Under the domination of this party the general government in 1846 made specie its only currency, and left the paper, the currency of the people in three quarters of the States, to take care of itself. That this measure for the protection of the treasury was judicious, supposing it to be settled that the paper was to remain free from all control, few are now disposed to deny; but it involved an abdication of power over the part of the circulation which was of immediate importance to the mass of the community, and a confession of the insolubility of a great public question, which hardly has its parallel.

The effect produced on our statesmen by thus drawing a line which left this whole subject in the exclusive province of State legislation, was disastrous. From 1846 to 1862 the study or discussion of currency and finance formed no part of the training of men for national politics. In the legislatures of the States questions of this class were dealt with by men of an inferior order, or by those who were only anxious to make their mark and go up into a broader field; but they had ceased to be national questions which could repay the political aspirants to national office for any considerable expenditure of time or thought. Congress had nothing to do with the currency, except to settle the weight and fineness of the coin, and government finance resolved itself into paying all demands in gold from a treasury which generally overflowed, and borrowing upon easy credit in any exceptional case of difficulty. It is not surprising that, when the war for the Union compelled the government to deal comprehensively and at short notice with questions of finance and currency in their most threatening form and on a gigantic scale, we had no leading man in public life who could speak upon them authoritatively or command general attention. The bald confessions of unfamiliarity with what had become the vital topics of the hour are a humiliating part of the record; but what other outcome from our public history was possible? We need not characterize in detail the consequences of this misfortune. Victory came in

season to avert the ruin with which the gross violation of the plainest economic principles threatened the nation, and the task of repairing the mischief and returning to specie was set before us. For eight years, however, it was overshadowed by the business of Southern reconstruction, and was habitually treated by men in public life as a topic of the second order, which could wait for settlement at a more convenient season, and as to which perhaps one need not yet make up his mind. The financial catastrophe of 1873 suddenly brought the currency question to the front, as one which must be answered if we would secure the return of stable prosperity; and the number of men, either in legislative or in executive position, who were then able to show that they had fairly investigated it and thought it out in the light of scientific principles, might almost be counted upon the fingers. The discussions which followed showed that the mass of public men were dealing with it, either with the audacity of unconscious ignorance or with the timidity of that which is conscious. The published debates exhibit our Congress for two sessions laboring painfully with sophisms which other countries disposed of half a century ago, and finally resorting to action which fails to be mischievous only because it has thus far been nugatory. The majority still drift upon the sea of doubt, without compass and without any directing impulse save such as may come from the veering gusts of popular feeling; and it is with this as the prevailing condition of opinion among the majority of our most conspicuous leaders on both sides, that we finish the first century of our national existence.

But that our statesmen have been incapable of taking any consistent action upon the currency question, and that every material interest is thus placed at the mercy of chance, is not, to our mind, the most serious evil resulting from this state of things. What appears to us most threatening is the sceptical turn thus given to opinion among the mass of our people. What is the ordinary voter to think of a subject which he himself finds dark, and as to which those whose opinion he is apt to follow either talk antiquated nonsense to him, or tell him that nothing is settled? Add to this the fact that one half of the present political generation have come upon the stage since we abandoned specie, and have had no other experience to en-

lighten them, and we cannot wonder that the currency seems to the mass a subject on which mankind have learned nothing, and that the plainest proposition of reason confirmed by history may any day be talked about as "an open question." The scepticism of searching inquiry is not to be feared; but the incredulity of ignorance multiplies tenfold the difficulty of the task of restoring the financial health of the nation.

In the case of the currency question, then, it appears that the subject from the first came before our public men in a form which seemed to make its political bearings too important to be subordinated to any scientific treatment. The same might be said of the tariff discussion, which, apart from its inevitable complication with individual interests, has never failed also to present itself in such sectional or party relations as to make its settlement turn largely upon far other considerations than those of general principle. Whether this complication has been the result of some untoward chance, or has come from the errors of our statesmen themselves, we need not now inquire; in either case the effect is the same. Under our form of government these two questions of currency and tariff cover most of the space within which those charged with national affairs have been called upon to investigate and apply economic laws. No doubt, important topics lie within the domain of State legislation; but there the adoption of any general theory, however sound, has been impracticable from the nature of the case. It is a part of the price which we necessarily pay for the advantages of our federal system, that under it questions of essentially general interest, such as those of taxation, education, or poor-relief, are classed as merely local, and are therefore not subject to any one controlling authority. With the two great questions of national economy, then, prejudged or inextricably bound up with other issues, it is hardly surprising that our statesmen should have neglected the investigation of this subject, so that it is to-day easier to find well-read economists among our men of business than among public men of equally good general education, although the inducement to such pursuits should not properly be any stronger in one case than in the other.

It is necessary, however, to look deeper than this for the

reason of the general sterility of American thought upon this subject, and the failure of our scholars as well as statesmen to contribute their share in the progress made by the world. For the explanation of this we must look to the causes which have made the progress of the United States so slow in philosophy, in the pure mathematics, and in abstract science generally, in philology, in the more recondite historical investigations, and in the higher generalizations in physics. Our position as a nation charged with the business of subduing a new world, and the rapid material development which has attended our success in this work, have given to our life for the greater part of the century an intensely practical aspect. Practical objects, and pursuits which are believed to be practical, have occupied the first place, almost as a necessity of our external conditions. It has been well remarked that some of our best achievements in natural science have been in those directions in which the promise of some material gain has afforded the stimulus,—as, for example, in economic geology, to which so powerful an impulse has been given by our eagerness to know the resources offered by our vast territory. Under such an influence as this it is but natural that the moral sciences should develop slowly. Nor could we expect that among these sciences political economy should outstrip the others. Broad as are its applications in the actual affairs of life, it is mastered and fruitfully studied best as an abstract inquiry. The thorough student soon finds that it is necessarily an investigation as to the direction which human volitions will take under given conditions, and that for its successful prosecution he must first direct his attention to the mind itself, finding in the complex phenomena of society the test but not the grounds for his conclusions. Especially has this been the necessary character of the study during the last century, while the work to be done was that of determining the fundamental principles of the science. Such a pursuit, at any rate in the stage from which it has hardly yet emerged, must needs appear remote from the present interests of a nation like ours, and could not offer an attractive field for scholars under the influence of a young and vigorous national life. Thus it has happened that not a few of our inquirers have either been unwilling to recognize this essentially abstract

character of the investigation, and so have vainly sought to remodel the science, or else have strained its conclusions by the attempt to give them a practical bearing in advance of what their development would allow. In either case the wrong road has been taken, and the result has been failure and disappointment. Hence, too, the occasional aspirations for an American political economy, or for a peculiarly national economy under any name, ending in nothing but fresh proof of the impossibility of stating the application of any scientific law under special conditions, until the nature of the law has first been thoroughly investigated, abstraction being made of all accidents of time, place, or disturbing influences.

Indeed, the strongly practical direction given to every pursuit in American life has not only served to turn our statesmen and scholars away from work in the field of political economy, but has also given a marked character to such work as they have done in that field. In the application of settled or accepted principles to special questions, particularly to questions of importance in politics, many of our writers have shown great skill. Examples of this kind of success in a narrowed field of definite practical relations may be found in the writings of Hamilton and Gallatin already referred to, in Henry Lee's report written in 1827 for the Boston committee in opposition to an increase of duties, in the valuable reports of Mr. Wells on the revenue system, in E. B. Bigelow's strong presentation of the protectionist argument, and in Grosvenor's application of the crucial test, "Does Protection Protect?" It is hardly too much to say that our best work is to be found in our pamphlets and occasional essays, and not in our systematic treatises, so powerful has been the stimulus of practical objects, and so weak the inducements to abstract philosophical inquiry. To the same influence must we ascribe the exceptional success sometimes attained in statistical inquiry, from the famous report of John Quincy Adams in 1821 on weights and measures, to some important discussions by Dr. Jarvis, and the admirable work done by General Walker on the census of 1870.

The fact must be taken into account, moreover, that deficiency in our comprehension of scientific reasoning and con-

clusions is perhaps less readily realized in political economy than in any other science. That its vocabulary is drawn from the language of popular discourse, and is therefore peculiarly liable to equivocal use and consequent vitiation of the whole process of reasoning, unless strictly guarded, has not only been an abundant source of misconception and error among economists themselves, but causes those who are unfamiliar with the subject to think that they have mastered its terms long before they can fairly claim any such mastery. The conceptions with which political economy deals are also subjects of every-day contemplation, on which every one must needs reason more or less, and as to the bearing of which in their broad scientific relations self-deception is peculiarly easy. The senator who calmly announced a couple of years ago that he had given his leisure for an entire fortnight to the currency question, and had thus been enabled to sound its depths, presented, after all, only an egregious type of the difficulty with which in this subject one acquires the knowledge that he knows nothing. This does not spring from any peculiar obscurity to be found in the subject itself, but from the fact that in dealing with it the mind is apt to begin with the tendency to misapprehension to which we have referred, which must first be overcome; just as the Copernican theory had to make its way against the supposed ability of every man to determine its falsity by the seeming evidence of his own eyes. And while this is not a peculiarity of the study of political economy in our own country or our own language, but everywhere impedes its progress, it is easy to see that, among a people who are predisposed to neglect, or to examine only superficially, whatever does not offer directly practical results, a science which under the most favorable circumstances is subject to such embarrassment, must lend itself with especial readiness to the prevailing disposition. Americans are disposed to neglect the higher mathematics as unpractical; but they do not imagine that they understand the subject. Political economy they are disposed to neglect for the same reason, and all the more because they flatter themselves that they already have it at command.

The failure of the American mind to aid in the development of political economy is not then necessarily the result of any

lack of original adaptation, but a natural effect of our environment. And we must observe that while material conditions have thus led to the neglect of the science, they have also led our people, scholars as well as others, into some serious misconceptions as to the direct bearing of economic laws. From our holding the position, unique among the great powers, of a people developing a rich and virgin territory, the conclusion often seems to be drawn that if the operation of such laws be not actually suspended in the United States, they can at any rate be disregarded with comparative safety. Few men outside of Congress or off the political stump will maintain the absurdity that for a new country like ours there is a different set of such laws from those which obtain in the Old World; but there is an unquestionably great amount of mischief done by the knowledge that the lusty growth of the nation will repair the injuries caused by economic blunders. Whatever follies our statesmen commit, the bounty of nature and the rapid increase of numbers incident to this stage of our growth soon cure the evil; its traces are soon overgrown, and we seem to ourselves to have suffered nothing. "Are we not richer and our States more populous than ever?" it is asked; "how then can we be said to have lost?" And it is not surprising that the sense of risk to be incurred by the mistakes of ignorance should be weakened, when it is found by experience that few such mistakes can bring our national expansion to an actual stop. "Where the concerns of a nation are conducted in a deep, strong, favorable current of the national energies and impulses," writes a critic in this Review of the last generation, "progress may be made, notwithstanding the mismanagement of the sails, oars, and rudder. This is precisely and pre-eminently the case in the United States, where the spontaneous, productive, onward energies are in greater activity than in any other country." The idea thus frankly avowed, that the management of our resources is of little account, so long as we find ourselves sweeping along with the current of growth, has been for years the habitual consolation of our public men, if not an article of their faith. That it easily leads to indifference as to the monitions of economic law is sufficiently obvious.

How complete our disregard of economic law has been, and

how little we owe our brilliant advance in wealth and power to the wisdom with which we have used our fortunate position, may easily be seen. The manner in which the currency, the life-blood of industrial circulation, has from the first been left practically to shift for itself has already been noticed. As a consequence there is no evil incident to a vicious currency, from the inability to procure the means of exchange for daily transactions on the one hand, to the wildest abuse of depreciated paper on the other, to which our body politic has not been subjected. And that the vigor of youth has enabled it to survive such disorders and even to recover its thriving condition has only seemed to give fresh encouragement to rash experiments on its endurance. In the matter of protection to manufactures neither protectionist nor free-trader would be willing to take the responsibility for the general result; for in fact neither has been able to secure adherence to his system. Six radical changes of our customs tariff, six reversals of policy, have occurred in the last sixty years. The present tariff, dating from 1861, already approaches the extreme of longevity, and, if we may judge from the past, must soon follow its predecessors, each of whom once appeared as strong and as firmly established as itself. In these successive revolutions we have seen industries artificially excited to a premature and unhealthy activity, and we have seen them laid waste by the withdrawal of the stimulus. Who can measure the misdirected labor, the destroyed capital, to repair which we have fallen back after each change of tariff upon those natural resources which no folly of management could exhaust! If we turn from the tariff to our internal taxation, where the adoption of sound principles has rarely been embarrassed by sectional or political considerations, the state of things is still more extraordinary. Down to the year 1861 the United States appear to have learned nothing as to taxation. Their burdens were generally too light to cause serious uneasiness, except in some cities, and the average legislature is tolerably well steeled against the complaints of city interests. Since the year 1861 the rapid increase of taxes in every form has attracted the attention of our people, but they are not yet sensible that their methods of taxation are antiquated and the machinery ineffi-

cient, that their systems lead to extraordinary inequalities, and often rest upon theories which fail of being ridiculous only because of their flagrant injustice. Ingenuity in preventing the escape of any taxable person or thing has been carried to a high point; the art of adjusting the burden so that it may be most easily borne has never been studied by any State legislature or by Congress. That our people have been able to endure this neglect of one of the first duties of good government, is due solely to the abundance of their resources, which for the present are able to withstand the effects of such waste by taxation as, in a country with lower profits, would be a serious check upon industry. Here, again, we rely for impunity on the rude health of youth. And as a final illustration of our easy-going defiance of sound principle, we may cite the continuance of slavery as the industrial system of the Southern States, until its unexpected destruction by war. Nothing can be more certain than that slavery was an economic blunder of the first magnitude. It notoriously stunted the social development of the communities where it existed, checked all tendency to diversification of employments by discouraging all pursuits except those least advanced, and craved for its successful working constant transfer of its exhausting cultivation to fresh soil. Leaving out of view its moral aspect, there can be no doubt that slavery, economically considered, was the most efficient system yet seen for simply taking the cream from productive powers, which under wise management are of unlimited duration. What this perseverance in a wasteful use of our resources has cost us, directly and indirectly, may be partly seen by comparing the splendid natural advantages of the Southern States with their present impoverished condition.

It may doubtless be said that we are not the only people who in the past century have committed errors of this kind and on a great scale. But we are the only people who with a light heart have trusted to the energy of growth to insure us against the effects of present mistake, and have therefore steadily neglected to cultivate one of the most important branches of the science of government. As a consequence, we find ourselves to-day absolutely incapable of following out, for example, such a firm and judicious course of management

as that by which France is re-establishing her finances on a solid basis, after a calamity in which all but the name of the French nation seemed to have disappeared. Not forced like others to count closely with our resources, we have in effect forgotten how to count with them at all, and are every day confessing our inability to deal with a practical problem, which has been promptly answered by others far less favored, either in material or in political conditions, than ourselves. That under such circumstances we should have added nothing to the world's knowledge of political economy is not surprising. The surroundings have not been incompatible with the prosecution of such a study, but they have not been such as to promote it. For that purpose something more is needed than the mere presence of great resources and of rapidly increasing wealth. The profound significance of the investigation as bearing upon the right use of resources must be realized, as it has not been among us, before we can expect that it will be pursued with much effect. Elsewhere this lesson has been impressed upon statesmen and scholars by the sternness of nature or the approach to the limits of her bounty, or by the necessity of dealing with the consequences of generations of misrule. But it is a lesson no more easily learned by a nation in the full luxuriance and strength of its early growth, than is that of obedience to the laws of physical health in the first flush of youth.

As the result of our failure to reckon closely with forces which will finally assert their presence, we find ourselves, at the close of our first century, falling manifestly short of the development to which our exuberant vitality might easily have carried us. In every case it was with seeming impunity that we offended against the laws of our well-being; but as the consequence of the whole, our statisticians are now accounting for missing millions of population, and for the slackening of the growth of wealth. The youth to which we owe our power of ready recovery from the effects of all transgressions is also passing away, and it is with a sort of angry surprise that our people note their increasing sensitiveness to the penalties with which economic error is visited. This leads us to the remark, in conclusion, that most of the conditions to which we have ascribed

the failure of the United States to contribute to the progress of political economy, being incident to the earlier stages of national life, may henceforth be expected to act with diminishing force. The period of the most rapid development of wealth once passed, we may expect the practical pursuits of life, or those which now seem to be such, to become less absorbing, and the tendency to enter upon deeper and more abstract investigations to strengthen. Already in our older States, which are farthest removed from the special conditions which characterize the United States as a whole, we may trace the first effects of this tendency, in their increased devotion to that sound learning and the arts for which the newer States, still in the hurry of swift growth, seem to have little leisure. As this movement strengthens, we may expect to see the moral sciences generally rising towards that proportionate development with respect to physical science which obtains in older countries, and among the moral sciences political economy advancing at least as rapidly as any. To this we shall be driven by material considerations as powerful as those which have thus far restrained our progress in this subject. As our condition approaches more and more to that of old countries, our ability to rely upon the increasing abundance of our resources to cure all mistakes will disappear, and the mistakes themselves will become obviously costly and formidable. In our case, indeed, they may easily become more formidable in their consequences than elsewhere; for in the coming century an economic blunder in the United States will be a blunder on a far more portentous scale than those of the past, and will work out its consequences among political elements which will admit of no trifling. Already our public men are appalled by the responsibility of answering such a question as is set them by the currency. But in such a country as we may reasonably believe this will be fifty years hence, and with the dangerous forces now growing within our democracy fairly developed, such a question will be for the men or the party to whom it is offered for answer a very Sphinx's riddle, and failure to solve it will mean political death. It will then no longer be possible for statesmen or scholars to ignore or neglect those economic laws which determine the consequences of our actions. The same

unfailing operation of historical causes, which in other countries has led to every great step yet made in the progress of economic thought, will produce its effect here. This action may be hastened by the shock of some crisis in national affairs; but if not, the same result must come in the fulness of time. The regular course of our development must, at a point not far distant, disclose to us an imperious necessity for investigating the laws of material wealth; and that point being reached, we may confidently expect that the United States will no longer fail to contribute their due share to the advancement of this branch of knowledge.

CHARLES F. DUNBAR.

ART. V. — LAW IN AMERICA, 1776-1876.

OF all the varied methods of viewing and discussing the character and extent of our national progress, the one which, in many important respects, is the most deserving of serious attention is that which directs us to the consideration of the development of American jurisprudence. The idea of law must be the one which underlies and affects, to a greater or less degree, all other ideas of popular life, and which imperatively demands investigation at the hands of any one who is seeking to get an impression, at once comprehensive and accurate, of the progress of civilization in any age or nation. The history of the jurisprudence of a country must always, of course, be one of the co-ordinates by reference to which we are to measure the direction and extent of national progression or retrogression. Religion, literature, the mechanical arts, the fine arts, science, manners, and dress may all furnish tests by which the inclination of a people in the direction of or away from enlightenment may be determined; but as none of these have such a practical, universal, and important bearing upon their daily life and daily relations as their system of laws, so none of them can be so safely consulted for the purpose of solving the problems of national life. It is to the jurisprudence of a people that we must especially look, if we wish to ascertain

the character of their civilization ; and it is therefore to the jurisprudence of the United States of America that we must turn if we wish to be able to say, truthfully and intelligently, whether the great Republic has or has not made real progress during its hundred years of life.

The general method of dealing with this subject might be twofold. On the one hand we might consider the advances which law in this country has made in comparison with English law, travelling along the same paths and in the same general directions. That is to say, taking those numerous branches of jurisprudence in which the American has adhered (in the main) to the principles derived from the English system, we might institute a comparison between the advances made by the two. In considering the subject in this light we would look, not to those cases in which the American has *departed* from the English law, but rather to those in which travelling (so to speak) side by side the one has outstripped, or fallen behind, the other. The question, in such a method of investigation, would always be : In which country has the development been most healthful and proper ? We would study to find out, not what new ideas have had their birth upon this side of the Atlantic, but whether, in the first place, old ideas have been improved upon at all, and, if so, to what degree. For example : The idea of modifying the common-law rule by which the husband became the owner, or acquired the right of becoming the owner of the wife's personal property, and of securing the enjoyment and control of that property to the wife, is one which has existed for centuries in English jurisprudence. It took practical shape in the creation, by courts of equity, of what was known as the separate use of married women. But in America, before many years in the life of the Republic had passed by, this idea not only appeared in the English chancery dress, but became, also, the subject of statutory enactment, and hence the passage of the numerous " Married Women's Acts " in nearly all the States of the Union. The fundamental principle already existed, and was being applied in both countries ; but while the two systems of jurisprudence were advancing along the same highway and in the same general direction, the American was placed many steps in advance of the

English system by the aid of positive legislation, and the gap, notwithstanding recent enactments in England, has not been quite closed up. Nevertheless, as has been said, the general direction of legal progress, upon this point, has been the same on both sides of the Atlantic. It was admitted, in both countries, to be desirable that, in some way and to some extent, the property of a married woman ought to be her own, and the only question was as to the best means of attaining this result. In England the indisposition to *statutory* reform in law forced the courts (or, at all events, one set of the courts, those, namely, of equity jurisdiction) to redress the grievance, as such it undoubtedly was. With us the tendency towards reformation by legislation led to the adoption of the other method of remedying the evil; and we shall see, further on, that this *method* of attaining the desired end was in accordance with the American tendency to a fondness for legislation which has developed itself, in such a striking manner, during the last fifty years. It cannot be asserted, however, that except in the method of carrying out the reform, there has been, in this instance, any development of a feature distinctively and characteristically American.

On the other hand a still more striking and interesting topic is the consideration of the *departures* of American law from English principles; and the cases here presented would be those in which, from circumstances which it ought to be the task of the student to discover and explain, American jurisprudence has found the rules of English law unsuited to the conditions of American life, has therefore repudiated or modified them, and has established a set of legal rules which may be termed essentially and properly American. This latter view of the general subject is one which would seem to present the greatest attractions to the student, and one which would, with the greatest propriety, be considered the most interesting and instructive at this period of the national existence, when we are occupied in looking for, pointing out, and discussing those features in the different relations of life which are often grouped together under the somewhat vague term of American institutions. Both methods, however, of dealing with the general subject will have to be, to a certain extent, adopted; and in

endeavoring to find out what are the peculiarities of American law which have grown up or sprung up since our separation from the mother country, and which tend to give our jurisprudence a national individuality, we shall be compelled to touch upon some points in which the American has advanced beyond, or fallen behind, English law in paths which are common to both.

It is a trite remark and one which has been made at many different times and with varying phraseology, that all law is the adaptation of principles of action to the physical and political conditions of a country and to its moral, social, and intellectual growth. All national institutions must bear the impress of the outward features of nature by which the inhabitants are surrounded and their modes of life, to a great extent, determined, and must also reflect the inward life of a nation and the external associations and internal consciousness by which that inward life has been moulded.

If we were to imagine a man placed, in a savage state, in a new country, and were at liberty to suppose that his individual existence could be sufficiently prolonged to enable him to reach, in his own person, a condition of civilization and enlightenment, it would seem to be plain that the causes which control this development and determine its character must be sought for, in the first place, in the external physical phenomena by which he was surrounded. Whether he were active or slothful, hardy or effeminate, bold or timid, prudent or reckless, and so on, would depend, to a measurable degree, upon the inclemency or mildness, the ruggedness or softness, the sterility or fertility, which belonged to the climate, scenery, and soil of the country where he lived. In the next place the nature of the society in which he was thrown, the character of the human beings among whom he was placed, and the events in his history, would enter into the determination of the character of the development. And, finally, his intellectual life, when it came into play (its nature determined by the food upon which it had fed), would make itself felt in its contribution to the general sum of his character.

So, in a nation, there are three great causes which control and guide the character of national development, — first, phys-

ical ; second, political, historical, or social ; and, third, intellectual : for every man must be regarded, first, as a dweller upon the earth ; secondly, as a citizen or social being ; and, thirdly, as a reasoning being ; and it is to the causes which control his life in each of these three aspects that we must look to discover why any one particular side of his life has assumed any particular shape.

And this is true in respect to nearly all institutions, — religion, art, literature, and so on. Mr. Buckle has very well and forcibly pointed out how the physical phenomena by which a people are surrounded influence their religious belief, rendering them more or less sceptical or superstitious, as the case may be ; and he has pointed out the further fact that such circumstances as religion, literature, and law are the results, rather than the causes, of civilization, and that the *causes* of civilization are to be found either in external influences or in internal mental action. Now, as external influences may come either from inanimate nature or from men with whom we associate, it follows that the external influences may be divided into those which are due to nature (in the sense of the inanimate creation) and to society ; so that this view is substantially the same as that which is here suggested, inasmuch as it asserts that the causes of all human progress must be found in nature, in society, and in internal mental action.

If this is so, then the development of American law, whether considered in respect to its departures from the law of the mother country, or in respect of its advances upon that law, must be sought for, first, in the physical features of the United States ; secondly, in its political or social history ; and, lastly, in the intellectual life of the people.

The obvious truth must, just here, be borne in mind, that where a people with fixed national characteristics are set down amid new influences, the traditions of the old life which they have left necessarily cling to them for a shorter or a longer period, and that the new influences may sometimes make themselves felt but slowly. Colonists adhere with no little affection and tenacity to the institutions of the mother country, and the effect of influences, which would otherwise be rapid, becomes necessarily tardy when their growth involves

the destruction of old modes of thought, as well as the establishment of new. Hence it is that, in considering the development of American law, it may be not unfrequently found that the results which would otherwise have promptly followed, have been in many instances retarded by an involuntary adherence to the English laws which the colonists brought over with them.

We pass from these preliminary observations to the first of the divisions suggested by the general treatment of the subject indicated above.

The differences between the physical or geographical peculiarities of England and of this country are numerous, varied, and striking. England is a compact, densely populated island, the geographical features of which are on a small scale, and whose resources, upon which its vast population must depend for support, are of such a character and of so limited an extent as to require to be constantly and carefully husbanded. Its greatest river is but a puny stream compared with the vast water-courses of the Western continent; its waste and vacant lands of a comparatively limited area; its forests the objects of jealous care; and its mines, though great and rich, yet of a measurable extent. Population is dense; labor cheap; wealth unequally distributed.

Turning, on the other hand, to our own country, we find a continent of almost boundless area, irrigated, in every direction, by streams of enormous magnitude; with a mineral wealth which is almost illimitable, and a population in all quarters (at least at the date of the separation from the British Crown) extremely sparse. Land was cheap; roads few; timber so abundant as to be something which was to be got rid of as an impediment to improvement, rather than to be looked upon as a subject for protection. The physical differences between the two countries have been and are, in short, enormous; and the conditions of life in which the two peoples have found themselves thrown have been, in many instances, as wide as the poles asunder. *A priori*, therefore, these great geographical differences should have had a very considerable effect upon the development of the legal institutions of the two

countries ; and accordingly we find that almost every one of these great differences noted above have been, in fact, productive of peculiarities in American legal principles.

One of the most important of these differences between American and English law, due to the geographical peculiarities of our continent, and one which may therefore be selected as a convenient illustration of this branch of the subject, is that which is based upon the character of our great rivers, and the consequent inapplicability of the English test of the ebb and flow of the tide as determining what streams are and what are not, in the eye of the law, to be regarded as navigable waters.

This distinction, based upon a physical difference, is of importance in two ways: first, in determining the right of riparian owners ; and, secondly, as defining the extent of the jurisdiction of the Federal courts in admiralty causes. It will be useful to give a brief notice to each of these two heads, and to occupy some little space in the consideration of this rather dry subject.

It is well known that, at common law, a navigable river was technically defined to be one in which the tide ebbs and flows. This definition was first laid down in the case of the Royal Fishery of the River Banne (Davies's Reports, 149), and is stated to be the law in the work *De Jure Maris et Brachiorum*, which has been generally recognized as the authoritative treatise upon this subject.

It has, indeed, been doubted whether even in England the ebb and flow of the tide is to be regarded as the only test of the navigability of rivers. In a learned work, Mr. Houck, of the St. Louis bar, has pointed out the fact that the generally received opinion upon this subject is possibly erroneous, and that it is a mistake to suppose that the sole test of navigability in England was the flux and reflux of the tide. According to this writer, the true test in England would be public *user* ; and that when such *user* exists the stream must be considered navigable in law, independently of the question of tides. It must be observed, however, that the most recent English treatises in which the subject is noticed (Hunt on Boundaries, p. 16 ; Hall on the Sea-Shore, edition of 1875, by Loveland, pp. 4, 13), the ebb and flow of the tide is still con-

sidered a test of navigability, and the conclusions of Mr. Houck should probably be received with some caution. The question is not material for the purpose of the present examination, for it is undoubtedly true as an historical fact that, heretofore, in judicial reasoning in this country, and in the views of text-writers, it has been assumed that such *was* the test of the English law, and it is from this principle (whether correctly or incorrectly ascribed to English jurisprudence) that certain of the American courts, as we are about to mention, have taken their departure.

It resulted from the English rule that the ownership of riparian proprietors was held to extend to the middle of the stream; and this view of the rights of riparian owners, under the geographical features in this respect which existed in England, worked no injustice.

But in the United States most of the great rivers are actually navigable far above tide water; and to apply the conclusion of the English law in reference to the rights of riparian owners would, under such a condition of things, be productive of great injustice. Hence in many of the States of the Union the English test has been discarded, and the navigability *in law* of rivers has been held to depend upon navigability *in fact*; and hence, as a corollary to this proposition, the rule has been laid down that in those streams which were *in fact* navigable the rights of riparian owners were limited by the shore, and did not extend *ad medium filum aquæ*. It is interesting to notice, on the one hand, the common-sense departure from the English rule in some States, and, on the other, the difficulty with which inherited law (so to speak) has been shaken off.

The earliest case in which the English doctrine upon this subject was repudiated, as being inapplicable to the physical features of this country, was *Carson v. Blazer* (2 Binney, 475), decided by the Supreme Court of Pennsylvania in 1810. In this case the plaintiff claimed an exclusive right of fishing in the Susquehanna River, opposite land owned by him; and the contention in favor of the enjoyment of this right was expressly based upon the fact that the Susquehanna was not a tide-water river, and that consequently, according to the rules

of the common law, the ownership of riparian proprietors extended to the middle of the stream, and that, therefore, fishing by another party, opposite the plaintiff's land, was an infringement of this right. But Chief Justice Tilghman declined to be governed by this argument, and took the broad and common-sense view, that the size and character of fresh-water rivers (such as the Susquehanna), in this country, rendered the English rule totally inapplicable; in other words, the general proposition was recognized that the rules of the common law which had been, in general, adopted must necessarily, in certain cases, be modified by the geographical conformations of the country.

This modification of the common-law doctrine has been recognized by the Supreme Court of the United States, and especially in the comparatively recent case of *The Daniel Ball*, decided in 1870, and reported in 10 Wallace, 557. The facts of the case were these: The Act of Congress of July 7, 1838, provides, in its second section, that it shall not be lawful for the owner, master, or captain of any vessel, propelled in whole or in part by steam, to transport any merchandise or passengers upon the "bays, lakes, rivers, or other navigable waters of the United States," after a certain date, without a license, with a proviso for the recovery of a penalty and the forfeiture of the vessel, in case of such violation. The *Daniel Ball*, a vessel propelled by steam, was engaged in navigating Grand River, in the State of Michigan, between the cities of Grand Rapids and Grand Haven, without a license, and it was to recover the penalty, consequent upon the alleged violation of the aforesaid act of Congress, that this action was brought. The libel described Grand River as a "navigable water of the United States"; and the answer, *inter alia*, denied that the said river was such a navigable water. It was admitted in the argument, on behalf of the libelled vessel, that the term "navigable water" included "not simply the tide waters, as is understood by it in England, but also the great fresh-water lakes and rivers of our country"; and that, in a still broader sense, the term was applicable to every stream or body of water susceptible of being made, in its natural condition, a highway for commerce. But it was contended that

the term was used in contradistinction to *domestic* waters, and implied a capacity in the stream, in reference to which it was used, for the carrying on of commerce *between* States. The Supreme Court, however, held that the term "navigable river" was applicable to Grand River; and the opinion of Mr. Justice Field is useful, in the present connection, not so much in laying down the law that the navigability of a stream, within the meaning of the act of Congress, does not depend upon the circumstance that the stream may or may not furnish the means of intercommunication between States, but as giving an expression to the views entertained by the highest tribunal of the country as to the original test of navigability prescribed by the law of England, and as to the applicability, or rather inapplicability, of that test to the condition of things in the United States. "The doctrine of the common law, as to the navigability of waters," say the court, "has no application to this country. Here the ebb and flow of the tide do not constitute the usual test, as in England, or any test at all, of the navigability of waters. There no waters are navigable in fact, or at least to any considerable extent, which are not subject to the tide, and from this circumstance tide water and navigable water there signify, substantially, the same thing. But in this country the case is widely different."* In some States the law upon this subject has been subject to very considerable fluctuations. Such has been the case in New York, where, however, the rule seems to have been at last settled in favor of what may be termed the American doctrine; and also in South Carolina, where one or two recent decisions appear to be in conflict with the anti-common-law rule established in the earlier cases. The different States of the Union may, upon this point, be divided into those in which the common-law rule has been adhered to, either by judicial decision or in obedience to some statute, and those in which it has been repudiated. The first class includes nearly all of the New England States, two or three Western States, and, of the Southern States, Mississippi and Virginia. Under the second class are embraced New York, Pennsylvania, many of the Southern, and one or two of the Western States. It is a little singular to remark that

* See also *The Montello*, 20 Wallace, 430.

the Supreme Court of Kentucky, in the case of *Berry v. Snyder* (3 Bush, 266), decided in 1867, applied the common-law doctrine to the determination of the rights of riparian owners on the shores of so great a river as the Ohio. In spite, however, of the adherence to the common-law rule in some of the States, and of the fluctuations of the law in others, it may be fairly said that the *tendency* of American law is in favor of the position assumed in *Carson v. Blazer*, and that whenever the question is squarely brought before the courts, the disposition is to admit the force of the argument founded on the physical peculiarities of the country.

Passing now to the question of *jurisdiction*, as affected by the rule now under consideration, we find that in the courts of the United States the common-law doctrine has been distinctly repudiated.

By the Constitution of the United States the judicial power of the Federal courts was extended to "all cases of admiralty and maritime jurisdiction"; and in the infancy of the Republic the question was, "What is the extent of the admiralty jurisdiction thus secured to the courts of the United States?" It was, at first, the universal opinion that this jurisdiction was limited by tide water, and that constitutionally it could not be extended further. But in the great case of *The Genessee Chief* (12 Howard, 457), decided in 1851, this question was finally set at rest and the doctrine finally established that the "jurisdiction, as conferred on the Federal courts by the Constitution, extends wherever ships float and navigation successfully aids commerce, whether internal or external." It was, in that case, pointed out that the basis of the limitation of the admiralty jurisdiction in England to tide waters was the geographical fact that, in *that* country, tide water and navigable water were synonymous terms, "and tide water, with a few small and unimportant exceptions, meant nothing more than public rivers, as distinguished from private ones." And it was further noticed, that the same physical basis for the rule not existing in this country, it would be absurd to apply such a rule where the foundation, whereon it might rest, was wanting; and that the change of law, in this particular, was but the application of the familiar legal maxim, "*cessante ratione*

cessat et ipsa lex." The decision in the case of *The Genessee Chief* has been recognized and followed in subsequent authorities, and the departure of American from the English law upon this subject is thoroughly established.

The law of navigable waters has been used as an illustration of the effect of the physical features of the country upon the departures of American law from the principles of English jurisprudence; and some little prominence has been given to this topic, because it is one which has not only received the mature and deliberate consideration of the highest tribunal in the country, but is one also which most suitably illustrates the influence of the geography of a nation upon its laws. Hence it has been selected as typical of the changes which have been produced by this cause. Other examples, however, of this direct influence may be readily pointed out. Thus while, in England, a tenant for life or the holder of other limited estates was not permitted to cut down timber (except for reasonable *estovers*), and such destruction was considered *waste*, and was deemed so grave an offence as to be punishable with forfeiture of the place wasted for the benefit of the remainder-man or reversioner, whose inheritance was supposed to be thereby damnified, in the United States, the dense growth of forests in a new country, and the fact that the clearing away of timber, so far from being an injury to land, was a necessity for its use and development, rendered the application of such a rule absurd. This impossibility of applying the English law of waste has been recognized in most of the courts of this country; and hence it has been generally held that the cutting down of timber, for the purpose of clearing and cultivation, is to be regarded as a proper use of land by a tenant with a limited estate, and as not constituting that injury to the inheritance which should be considered, in a technical sense, waste.

So also in the case of mines; while in England the opening of new mines on demised lands is waste at common law, on this side of the Atlantic the tendency is to regard such a *user* of realty as proper and lawful on the part of one having only a limited estate therein, in cases where the value of the property depends altogether, or very much, upon the minerals which it contains.

We pass, now, from the discussion of the direct and obvious effects which the geographical characteristics of the country have had upon American law, to the consideration of others of a more indirect and derivative character. A very brief notice of one or two of these indirect effects will serve as illustrations of this part of the subject.

And, in the first place, the subjection of lands to the payment of debts, in which American has so much taken the lead of English legislation, while owing in a very great degree to the historical, social, and political associations and institutions of the country must partly, at least, be ascribed to the abundance of land. That in some portions of our country there is a certain sacredness which attaches to land, that this feeling is growing (especially in the Atlantic States) with the growth of population, and is being fostered even amid the plentiful abundance of land in the West, by "homestead" and "exemption" laws, may be conceded; but the sentiment which exists here is as nothing compared with the reverence which the landowner or even *landholder* in England feels for acres which have been his and his ancestors, from generation to generation. And in very many parts of the United States no such feeling exists at all; for in the West, at all events, the facility with which land is obtained detracts very much from the pride of its acquisition, lessens the importance of its possession, and necessarily takes away, in a proportionate degree, from the bitterness of its loss. The man who has seen his predecessors acquire vast tracts by the exercise of a pre-emption right at a nominal figure, and who has, himself, the almost boundless West before him, with the indefinite chance of squatter privileges beyond the limits of civilized settlements, not only lacks any sentiment of attachment to the soil, but is pressed by no practical necessity whereby such a sentiment might be produced and fostered. Hence it has followed that the legislation of the American States has tended, with almost universal uniformity, towards the subjection of land to the payment of debts, and that the results which have only been reached in England during a comparatively recent period were attained in this country from (it might almost be said) the earliest times in our colonial history. Of course, this tardi-

ness in the English law, and the tenacity with which it clung to the exemption of the land of a decedent from the payment of his debts, were due, in a very great extent, to the influence of ideas derived from the feudal system, and to the constitution of society which that system produced ; and the advances made by American law are to be ascribed in no small degree to the absence of such social influences in this country. But the difference is not, perhaps, to be altogether accounted for by considerations of such a character, and is to be set down, in a very great degree, to the credit of the abundance of real estate, the facility with which it can be acquired and disposed of, and the consequent little value which is attached to it by the holders.

To this same cause may also be partly attributed the facility of alienating land which obtains throughout the United States. It is true that the whole theory of the feudal system was opposed to the easy alienation of real property, and it is equally true that the non-existence of that system in the United States has contributed vastly towards the unfettering of lands and their free transmission from hand to hand ; and therefore it may be said and truthfully said that the departure of American from the English law in this respect is due largely to political and not to geographical causes. But as in England the comparative scarcity of real estate fortified the results which the feudal doctrines had already produced, so in this country the extent and consequent cheapness of land strengthened the anti-feudal feeling to which the social institutions of the country had given birth. In other words, land has, in this country, become an article of commerce, not solely from the absence of those principles of the feudal law which fostered restraints upon alienation, and whose abrogation in this country was due to political causes, but also from the fact of the extent of the country and from the result which flowed naturally from that fact, namely, that there was produced a "market" for real estate. When real estate became an article of commerce and speculation, when a man bought land, not for the solemn purpose set forth in fee-simple deeds, "to hold to him and his heirs forever," but with the design of cutting it up into town lots, or founding a real-estate association, or

launching a mining company or a cemetery; when transactions in this species of property became so rapid and extensive that the title to thousands of acres, worth millions of dollars, passed through scores of owners in a few days or possibly a dozen hours,—it is not to be wondered that the business exigencies of the community forced the law to adapt itself to them, and that the title to land became almost as capable of rapid and informal transmission from hand to hand, as the ownership of a bale of merchandise or the title to a promissory-note. No one can look through the law reports of some of our States without being struck with the facility with which “articles of agreement” for the sale of land passed between vendor and purchaser, and answered the purpose of more formal title deeds. The manner in which in Pennsylvania (for example) these “articles” (or rather the title of which they were the evidence) were sold, pledged, mortgaged, surrendered, assigned, levied upon, and disposed of in every imaginable way, is a forcible illustration of the method in which the wants of a community compel a rapid and easy working of legal machinery; but, as before stated, this facility for alienation is undoubtedly due, not only to the political, but to the geographical characteristics of the country.

We must leave this branch of the general subject with the above hasty illustrations of it. They are sufficient, perhaps, to show the soundness of the proposition already stated, that the external or physical peculiarities of the North American continent have influenced the character and development of American law. What the extent of that influence has been, and through what more detailed and intricate ramifications it might be traced, may be readily conjectured; but such an amplification of the topic must be abandoned, for the purpose of passing to the consideration of the other main heads of the subject.

The peculiarities of American law which are due to the political history of the nation, while important, are of a somewhat obvious and commonplace character; and it would seem, therefore, to be sufficient to dismiss them with a brief notice. The changes in the common law, affecting private rights, which

have occurred in consequence of the character of the political institutions of America, took place at such an early period in our history, and were so complete and thorough, that they have about them little or nothing of a present progressive nature, and therefore furnish few or no indications of the future tendencies of American jurisprudence. It is undoubtedly true that the political institutions of the country have had an effect, and a very decided effect, upon the nature and the development of the American intellect; and as this intellectual development has made itself felt in jurisprudence, and has given to it some of the peculiarities by which it is distinguished from the jurisprudence of England or of the nations of the European Continent, it is therefore also true, as a necessary corollary, that these political institutions have thus had a very great indirect, as well as direct, effect upon jurisprudence. But as this effect has been produced through the medium of the intellectual life of the nation, it will be proper to reserve its consideration until that branch of the general subject is reached. At present, we have to do with one or two obvious and direct consequences which followed from the political history of the country.

When the political structure, then, of American society was altered by the Revolution and by the subsequent establishment of the Constitution of the United States, the effect of the change was to produce certain modifications of the rules of law in regard to private rights which the change in the form of government rendered necessary, or, at all events, expedient. Not that these changes in the law of private rights were due solely to the Revolution and to the establishment of the present form of government, for they may, in many instances, be traced to ideas which flourished in the Colonies during the ante-Revolutionary period; and these ideas were themselves the outgrowth of changed political conditions which had existed from very early periods in colonial history. Accordingly we find that, in several cases, the modifications of the common law which grew out of peculiarities in the political condition of the American people can be traced to causes which were in existence prior to the separation of the Colonies from the British crown.

Of these modifications one of the first, the most natural, and the most important which took place, was that which abrogated the third canon of descent in the English law, the right of primogeniture. The whole spirit of the institutions of this country was so much opposed to the doctrine, it was so contrary to that principle of equality which was the mainspring of American civil government, that it was abrogated from very early times. The influence of the doctrine did not, however, immediately disappear. The law of primogeniture prevailed in some of the Colonies until the Revolution, and even for several years after that date the eldest son was in many of the States distinguished by a right to receive a double portion; and this right, which was spoken of as being "according to the law of nature and the dignity of birthright," was not abolished until several years after the Revolution. Thus, such was the law of Pennsylvania until 1794, and in Connecticut until 1792. Estates tail lingered in some States for many years afterwards; and, while ordinary fees descended to all children equally, a limitation was still capable of being made by which real estate would descend to the eldest son, in obedience to the statute of Westminster II., and "according to the form of the gift." The influence of American political institutions, however, has nearly altogether done away with these lingering relics of the English feudal system, and the laws of nearly all the States of the Union have, under this influence, reached a state of uniformity upon this branch of the law of descents.

Another of the English canons of descent was also abolished, namely, that which required title by descent to be derived from a person last seized. This rule was of purely feudal origin. The whole system of the enjoyment and transmission of real estate according to the early English law was, as is well known, based upon the idea that it was a gift to the feudatory by the lord. The gift was in the earliest times for life only; and even where the gift came subsequently to be made to one and his *heirs*, the heir was originally considered as taking rather by the immediate bounty of the donor, by which he had been included in the gift, than by any transmission of title from his deceased ancestor. One form of this prevailing idea continued to exist in copyhold lands, where upon every fresh

descent the heir did not acquire the absolute right until after admittance to the estate by the lord of the manor. Now it was considered as the lord's privilege to know who was going to hold the fee, as it was his right to see that no one intruded therein who was not a person fit and likely to perform the necessary services of tenure. Investiture by the lord was the solemn declaration that the party receiving it had been selected as tenant. The maxim that required the heir to trace his descent to the person last seized was, therefore, simply a substitution for the rite of investiture ; for where this could be shown, the ancestor having received the actual gift from the lord, and assumed the position of tenant, the heir also was supposed to be *in* by virtue of the same gift and with the lord's sanction.

This rule was obviously entirely out of place in the conditions of life in which the people of America have found themselves. Accordingly it may be said to have been universally abandoned ; in some instances (as in New York) the change having been made by statute, in others having been accomplished by virtue of the common law of the State.

The two examples which have been given from the English canons of descent are, perhaps, sufficient illustrations of the mode in which the political history of the country has modified the laws relating to private rights. As has been already stated, the change in such particulars has been complete and decisive, and furnishing as it does little or no suggestions for future reformation in jurisprudence, may be profitably abandoned for the consideration of a more interesting subject.

We have seen how the physical features of the North American continent have influenced the development of the jurisprudence of this country, and have produced in it departures from the English system ; and we have also noticed, with great brevity, how similar results have followed from the change in the social and political circumstances of the country which had its rise in the early periods of the colonial annals, and which culminated in the great historical events of the latter part of the eighteenth century. There still remains to be considered the most important and also the most interesting side of the present subject, namely, the effect produced upon American

law by the development of the intellectual portion of the American character.

In examining the effect produced upon the laws of our land by its geography and history we have found, in most instances, that the *character* of this effect was that some common-law rule or principle, which was, or was thought to be, inapplicable, was abrogated, and a new and in many cases totally different principle or rule substituted in its place. On the other hand, in considering that portion of the progress of American law which is due to our intellectual life, we shall find that this progress has sometimes displayed itself in the invention or creation of new ideas, and sometimes in the ingrafting of reforms upon old ones. This general branch of the subject, therefore, embraces not so much those cases in which the *peculiarities* of American law are developed, as those in which American jurisprudence has shown the twofold spirit of *originality* and of *reformation*.

That American jurisprudence has possessed and displayed the spirit of originality, and that this originality is due rather to internal or mental causes than to those which are external or physical, cannot be doubted. American philosophy affected American law. The studies of men who in the infancy of the Republic guided political events, the bent of their intellects, the philosophical doctrines which they imbibed, and the modes of thought which they brought to the consideration of the problems of government which were then presented to them, necessarily made themselves felt in guiding the direction and controlling the extent of the advances of American jurisprudence, and necessarily also produced what may be justly termed an *American* intellect which had qualities and characteristics peculiarly its own and not borrowed from European mental growth. To examine the subject thoroughly would require a profound and prolonged study of the movement of European philosophy in the eighteenth century, and of the effect which this movement had upon the American Revolution; but even a cursory and somewhat superficial glance will be fruitful of suggestions of no common interest and, possibly, of lessons of no slight importance.

During the eighteenth century, and perhaps earlier, the

American mind had acquired ideas upon (among other things) the science of government which appear to be of indigenous growth. Certainly they cannot be traced, with any distinctness and accuracy, to any intellectual influence coming from England or from France. A great writer has pointed out and commented upon this fact. After speaking of the general activity of human thought in the eighteenth century, M. Guizot says: "The popular sciences soared upwards, and still higher than the sciences mounted the philosophical spirit of the age, — haughty and self-willed, aspiring to pervade everything and to regulate everything. Without excitement, without commotion, — rather by yielding itself to its natural bent, than by forcing itself into new paths, — Anglo-America took its place in this grand movement." What was this "natural bent" of the Anglo-American mind? What place did it seek to take for itself in this grand intellectual movement? That American philosophy had a vigor which was essentially original, and characteristics which, while influenced by the general tendencies of European thought, were not borrowed directly from European sources, may be shown by reference to one or two familiar examples. Thus, in criminal jurisprudence the American mind has always been far in advance of the English in the enlightened character and originality of its views. The experiment of substituting hard labor for capital punishment was tried at an early period in Pennsylvania, and was recommended by Jefferson and his co-revisors of the Virginia code in 1779; and the seeds of reform in criminal law, sown at an early date, have borne most luxuriant harvests.

A still more striking illustration of the originality and progressiveness of American philosophical jurisprudence is found in the early legislation upon the subject of public education. In Connecticut, as early as 1672, it was enacted that every township which numbered fifty householders should forthwith appoint one within the town "to teach all such children as shall resort to him to write and read, whose wages shall be paid either by the parents or masters of such children, or by the inhabitants in general, by way of supply as the major part of those who order the prudentials of the town shall appoint." Early in the succeeding century additional legislation took

place in the same State, whereby it was prescribed that schools should be kept open for eleven months in the year, and a tax for their support was directed to be levied. Well might Zephaniah Swift say, "Did I know the name of the legislator who first conceived and suggested the idea, I should pay to his memory the highest tribute of reverence and regard. . . . I feel a pride to think that my country has been enriched by such a noble discovery." In other ages and in other nations, by great writers and profound thinkers, in Rome, in England, and in France, by Quintilian, by Locke, and by Rousseau, had educational systems been thought over in the recesses of philosophical minds and brought to light for the benefit of mankind. But they were systems for the rich and patrician, not for the poor and plebeian; and they were theories rather than systems. The American mind, practical as well as liberal, brought down this boon from the region of speculation and applied it, through the machinery of statute law, to the direct and practical amelioration of mankind.

These, however, are but passing illustrations of the originality of American thought in jurisprudence. The *great* fact in the progress of American jurisprudence which deserves special notice and reflection is its tendency towards *organic statute law* and towards the *systematizing of law*; in other words, towards *written constitutions* and *codification*.

It is well known that the spirit of free inquiry (which was the characteristic spirit of the eighteenth century) was, on the other side of the Atlantic, of a theoretical rather than a practical character, and that the men by whose writings it was illustrated and fostered were those who, either from lack of opportunity or want of ability, had no power to put their teachings into practice. Hence it happened that, while the eighteenth century was rife with speculations upon government as a science, constitutional government, in the sense of a government under and by virtue of a written constitution, was a thing unknown.

In America, however, the theory of written constitutions was, at a very early period, practically and successfully applied to the science of government.

The first germ of the theory of a government by a written constitution is perhaps to be found in the "Fundamental

Orders" adopted on 14th January, 1639, for the government of the three towns of Hartford, Wethersfield, and Windsor, in Connecticut. By this instrument the inhabitants of the three towns "doe assotiate and conioyne our selues to be as one Publike State or Commonwelth" and "in our Ciuell Affaires to be guided and gourned according to such Lawes, Rules, Orders and Decrees" as are thereafter set forth. This constitution endured until the establishment of the Charter government in 1665.

But the earliest important step in the direction of government by a written constitution may be considered to be the adoption of a written constitution by Virginia, on June 29, 1776. It is true that in March of the same year a form of government had been adopted in South Carolina, and even prior to the last-mentioned date New Hampshire had prepared and declared in force a system of organic law; but both of these so-called constitutions were of a temporary character, and were in terms only designed to remain in force "during the unhappy and unnatural contest with Great Britain" (as the New Hampshire convention expressed it), or "until an accommodation between Great Britain and America could be obtained" (as was the language used in South Carolina). Virginia must therefore be considered as entitled to the honor of having first given a permanent and satisfactory demonstration of the great governmental theorem that communities can be successfully governed through the medium of a written organic law. It is not forgotten that prior to 1776 written *constitutional laws* had existed, and written forms of government had been in practical operation; the circumstance that organic statutes, forming a part of the basis of the English government (such as Magna Charta), had existed for centuries; that in the Middle Ages charters (such as those in the Netherlands) had existed; and the other circumstance that written charters or written codes of laws had prevailed in the American Colonies from the period of their earliest settlement. But these are facts which do not militate against the proposition above laid down, for the English constitutional statutes only affect to embody a few out of the many fundamental legal principles upon which its government rests, and

fall far short of that complete legal framework to which alone the name of a constitution can be in strictness applied; and the colonial governments, while furnishing illustrations of complete (or attempted complete) political systems, approach, too nearly, mere schemes for the management of municipal corporations which do not depend, either in their original creation or for their permanent endurance, upon any original social compact of the governed. For two capital elements must enter into every true idea of a *constitution*: namely, first, that it should be created only by the society which is to be governed by it; and, secondly, that it must be subject to alteration only by virtue of, and in accordance with, provisions contained in itself, or, in the absence of such provisions, by the people. If these are the correct tests, and if they are applied to modern European history prior to the American Revolution, it will be found that the above proposition is correct; namely, that, prior to the adoption of the Virginia Constitution of 1776, the science of jurisprudence had not yet reached that pitch of practical perfection which enabled a community to reduce the legal framework of society to writing, and to create instruments which should be paramount to the ordinary law-making power, and which should not be altered, save in obedience to methods presented in itself, or by the people. It will, of course, be remembered that the experiment had been tried, and that the genius of John Locke had furnished to the Carolinas a constitution which had been attractive theoretically, but had proved utterly unable to stand the ordeal of practical operation. But Locke's scheme, though a failure, had turned the American mind in the direction of the expediency of written constitutions, and had developed the idea that, apart from the question of *concession* from a sovereign, it was desirable that the organic law of a State should be in writing. And this is the idea which has distinguished the Constitution of the United States, and the constitutions of the various States of the Union, from the so-called constitutions which have, during the present century, been granted by European monarchs to their people, and from the charters of the Middle Ages. It is desirable that constitutions which a people wrest from a despot by whom they have been governed should be put in writing,

in order that some fixed and known limits should be established, by which newly acquired liberties may be guarded; but whether or not a free people should put their organic law in writing is another matter, and depends on other considerations. It is purely a question in the science of government. In America the question has been decided in favor of written constitutions. The idea of liberty has, of course, entered largely into the determination of this question; for while in the case of a free people, who are perfectly at liberty to form their own governmental institutions, it is unnecessary to provide against the encroachments of existing despotism, it is, nevertheless, desirable to guard against such encroachments in the future, that is to say, against possible revolutions in favor of absolutism. Yet the primary idea among such a people is (it may be repeated) the purely scientific one, that the theory of good government is more likely to be successfully carried out under a written than an unwritten organic law; and it is the practical and successful application of this theory which must be considered as a great step forward in the progress of civilization made by America.

The example of Virginia was followed very shortly in Pennsylvania, the first written constitution of the latter State having been adopted on September 28, 1776; and nearly all the other States, in following out the recommendation of the Continental Congress of June 14, 1776, to "form governments" did so by establishing their several political systems upon the basis of written organic law.

The example of America in this particular was felt directly, and almost immediately, in Europe. Not only did the ideas of civil liberty, which had sprung up in America during the Revolution, penetrate into France, and contribute towards the accomplishment of the revolution in that country, but the still further idea of a government by the means of a written constitution took root in France, and has never since been eradicated. The first written constitution of that country was adopted on 3-14 September, 1791. It was essentially a fundamental instrument. It was preceded by a declaration of rights, and by an express abolition of former institutions, and

it contained (in Title III., Arts. 1 and 2) averments which indicated its radical and comprehensive character, namely:—

1^{er}. La souveraineté est une, indivisible, inaliénable, et imprescriptible. Elle appartient à la nation; aucune section du peuple ni aucun individu ne peut s'en attribuer l'exercice.

2^d. La nation, de qui seule émanent tous les pouvoirs, ne peut les exercer que par délégation. La constitution française est représentative; les représentans sont le corps législatif et le roi.

It is a matter of history that the ideas of republican government thus promulgated were derived largely from America, and particularly from Jefferson, who must, it may be remarked, be regarded as the expounder of the system of representative government which was then being established, and which has, since his time, exercised such an important influence throughout the world.

How well the system of written constitutions has stood the trials of one hundred years, all the world has seen. We have seen how these organic laws have been amended from time to time, when reformation has been necessary, without seriously impairing the just reverence for constitutional law, which is one of the safeguards of government; and the present generation has witnessed how well such written constitutions have stood the shock and strain of war. Among all the lessons which the world has learned from the progress of the American people, none are of greater value than this, that government by written constitutions is strong enough to restrain human passions in times of the greatest excitement, and, at the same time, mobile enough to be compatible with true progress.

Akin to the disposition to crystallize organic law in the form of written constitutions is the disposition to codify municipal law, which has always displayed itself in the legal history of all of the States of the Union. When codification is possible in a nation, it is a proof that it has reached a mature stage in its progress in civilization; it is *not* evidence (as has been, it is submitted, erroneously asserted) that the people among whom it has thus become possible have reached such a degree of maturity that further development is difficult, if not impracticable. This erroneous idea has been promulgated by a modern writer (D. C. Heron, *History of Jurisprudence*, page 141), but its unsound-

ness may be demonstrated by one of the very examples which is brought forward in its support. The history of France is cited as a proof that, after the adoption of a code, national progress ceases; and "France," says the author just quoted, "now appears stationary in wealth and population." These words were published in 1860. Eleven years later that nation demonstrated the fallacy of at least one branch of the above proposition, by showing her ability to meet a war indemnity so grievous and vast that it seemed almost impossible that any people could avoid being financially ruined by it, but which was met, nay, anticipated, in a manner which must not only redound forever to the credit of the people upon whom it was imposed, but must be a convincing proof that national wealth, under the system of codification, became in France not only enormous in extent, but capable of being turned with promptitude and facility to meet exigencies of the most extraordinary and unforeseen description. So far, therefore, from codification being the proof of an effete or even stationary civilization, it is on the contrary the evidence of intelligent and scientific efforts to meet the legal wants of a progressive age, and to keep the vast mass of laws, constantly increasing in extent and variety by the increasing demands and developments of society, within reasonable and manageable bounds. Codification, to a greater or less extent, must, in truth, become indispensable to any nation which draws its laws from varied sources, (and what nation does not?) and which designs or attempts to make the progress of those laws keep pace with the growing wants of the times without developing into a mass of unmanageable and contradictory rules. The practical administration of law depends, in a measurable extent, upon its simplicity; and this end can only be attained, and overwhelming complexity and voluminousness avoided, by resorting to the expedient of codification. Not only does the mass of laws increase with the constant increase in number and complexity of the relations of life produced by modern civilization, but the sources and instruments of law are continually accumulating by the system of preserving decisions and multiplying reports. No nation, in modern times, can afford to go on accumulating vast masses of authoritative decisions and statutes, without occasionally stopping to digest decisions and to revise written laws.

In most of the States of the Union the systems of laws under which the people have lived have been drawn from numerous and varied sources. It is true that in most of them the English common law has furnished the basis for their jurisprudence. But when we consider the various sources from which English municipal law has itself been derived, when we reflect upon the changes in that system rendered necessary by the changed conditions of life under which people on this side of the Atlantic have flourished, and when we add to these facts the further fact of the necessary complexity of law which has been produced by the very progress of civilized life, it is not difficult to see that codification, partial or entire, must have become indispensable. Codification has, indeed, been decried both on the European continent and in England; but the objections which have been urged against it have been shown by one of the most profound and intelligent writers in modern times to be fallacious. In his "Lectures on Jurisprudence, or The Philosophy of Positive Law," John Austin has analyzed these objections, and has pointed out the fact that the evils which have been alleged to exist in divers codes of European States have been due to the faulty manner in which the work of codification has been executed, not to any defects necessarily inherent in the system itself. That author truly says that "A code, as meaning a body of law expressed in general *formulae*, arranged systematically, and complete, is a modern idea," and the value of this "modern idea" has been recognized in England only during the past few years.

But this truth which has so slowly forced itself upon the minds of English jurists, or rather (it should be said) on the attention of English legislators, was understood and appreciated on this side of the Atlantic at a much earlier date. Shortly after the close of the first quarter of this century, New York and Pennsylvania began the task of arranging, formulating, and systematizing their laws in all the various branches of jurisprudence. Since then there are few States in which general revisions of the statute law have not taken place from time to time, and codification, more or less general, been carried out. The tendency still exists, and is almost every year producing practical results. During the last ten years, not only have

“ Revised Codes ” been adopted in the Southern States (where the political changes produced by the war would render such revisions of the law a necessity), but also in Western and New England States. Such, for example, are the Revised Code of Iowa, completed in 1873, and of Connecticut, adopted during the year which has just closed.* The improvements and advances in American law resulting from the carrying out of the tendency to codification have been of a marked and important character. Among the more striking are, first, the abolition of the distinction (derived from the English law) between courts of law and courts of equity, and, secondly, the simplification of the methods of legal procedure.

To a layman the inherent distinction between common law and equity is plain enough; but the circumstance that justice is administered according to one system in one set of courts, and according to another (and in many instances contradictory) system in another set, must be extremely puzzling. That rigid rules are generally requisite for the regulation of civil conduct, but that under certain circumstances, and in certain exceptional cases, these rules require modification, is an elementary truth in the administration of justice which is readily recognized by every one. It is a necessary and unavoidable concession to the weaknesses of human nature, or to the force of accident. It is desirable, for example, when parties to a contract have put their agreement in writing, that they should be bound by the terms of the written instrument which they have thus constituted the evidence of their intention; but it is also equally desirable that when, through the fraud of one party, the written document does not faithfully represent the true meaning of the transaction, the other party should not be bound thereby. It is equally plain, again, to the uneducated understanding, that a man should, as a general rule, be permitted to assert any right, title, or interest which he may happen to have acquired in or to any property; but it is also equally apparent that such assertion of right should not, in fairness, take place when the party entitled to it has so acted as to induce another to believe that no such right existed, or would be insisted upon, and has induced the expenditure of

* The recent revision of the Federal Laws must also be remembered.

money, or the parting with something of value, on the faith of such belief. Now these two illustrations of fraud and estoppel are instances of equitable doctrines which coincide with the ordinary ideas of justice which exist in the mind of every one, layman or lawyer. But why a man should not be suffered in one court to show the fraud upon which in another tribunal he would be entitled to rest his claim for relief, or why, on one side of Westminster Hall, a plaintiff should be permitted to assert and recover upon a title which, on the other side of the Hall, he would not be allowed to set up, or, in other words, why the law administered in one court should be different from that administered in another court of the same nation, is a proposition which, at first glance, at all events, appears to the mind of the layman to be utterly unreasonable. It is clear, therefore, that the inherent distinction between law and equity, in certain senses of the term, is in accordance with ordinary common-sense, but that it is *not* in accordance with unprofessional reasoning that these two systems should not be recognized and enforced in all the tribunals of a country.

Now the reason for this division of the administration of justice between different tribunals in England was historical rather than philosophical. In other words, "equity," in the sense used in English jurisprudence, has never been found capable of any distinct and satisfactory scientific definition, but can only be properly understood and appreciated by a study of the manner in which courts of justice, in early times, grew up and were organized. In the earliest period of their history, the Courts of King's Bench and Common Pleas felt bound to recognize only legal titles and legal rights, and were, of course, unable to apply any remedies except those which were allowed by the somewhat cramped and unyielding forms of common-law writs. Hence there arose, in a perfectly natural way, and as a part of the national growth, a distinction between common-law and equitable courts, which, while it had no foundation in scientific jurisprudence, had such a deep root in the English Constitution, that it has been but yesterday abolished.

Like other institutions of the mother country, this distinction between courts of law and courts of equity was imported

into the American colonies, and was retained in many States after the Declaration of Independence. Very many of them had separate equity judges (chancellors), and almost all of them had separate courts, in which equitable doctrines were recognized, although in many instances presided over by those who acted in the other courts as common-law judges. In Pennsylvania a system existed which may be considered as the precursor of the statutory consolidation of law and equity which has taken place during the middle of the present century in other States of the Union, and which has just been adopted in England. This system was simply the adoption of equitable doctrines by the common-law courts, and their administration, as far as practicable, under common-law forms. The theory upon which the administration of justice, according to this system, was based, the extent to which it was carried, and the practical success and efficiency by which it was attended, were explained in a remarkable essay, first read as a lecture before an association of students-at-law and younger members of the bar in Philadelphia, and subsequently published in book form, namely "Anthony Laussat's Essay on Equity in Pennsylvania." This work, when profoundly considered, must be regarded, in spite of its brevity and comparatively ephemeral character, as one of the most remarkable productions in the history of the literature of jurisprudence either in this country or England. It recognizes, enforces, and illustrates the truth, which it has been the aim of reformers during the last thirty years to reach, namely, that there is no inherent necessity that equitable relief should be administered in courts which are separate and distinct from ordinary legal tribunals, and it points out the fact how this consolidation of justice had been very largely (though not completely) attained in Pennsylvania by the administration of equitable principles in common-law actions.

According to this system, equitable titles were always enforced in common-law suits; equitable rights were constantly recognized in all the courts; and the only failure of the system was that which occurred when certain equitable remedies were desired, and when the common-law writs were then powerless to do complete justice, although, even in this last case, at least

one equitable remedy, that, namely, of specific performance of contracts for the sale of land, was enforced through the medium of the action of ejectment.

A few years after Laussat's Essay was written, namely, in 1836, equitable jurisdiction was conferred upon the courts of Pennsylvania, and relief is now administered not by separate equity judges, but by the judges of the ordinary courts according to the course and practice of chancery; but it has nevertheless been held, and is now the thoroughly established doctrine in that State, that, notwithstanding the grant of chancery powers, the old system of administering equitable relief under common-law forms is still unimpaired, and this doctrine is constantly being acted upon, and equitable titles and rights are always recognized, as heretofore, in common-law suits.

The consolidation of courts of law and equity in those States in which they had previously existed as distinct tribunals began in 1840 with New York. It was followed in other States, from time to time; and while there are many States in which equitable jurisdiction is exercised by common-law judges according to the course and practice of chancery there, there are very few in which distinct chancery tribunals are maintained. The desirability of the consolidation of the courts is a fact which has long been recognized in England, but the end, however much desired, was not attained until the passage of the Supreme Court of Judicature Act in 1873, which, after some postponements, has at last gone into practical operation.

Every credit is due to English legal reformers for the passage of such an act, and every allowance must in fairness be made for the difficulties which existed in the way of uprooting old institutions which had grown and flourished from the very day when the seeds of English jurisprudence were sown. But when we reflect on the promptness and energy with which we on this side of the Atlantic have solved the problem, we cannot but congratulate ourselves that the activity which has been the characteristic of the American mind in so many departments of life has not been wanting in the science of jurisprudence, and has brought about results which have furnished examples to be imitated by those from whom our legal institutions have been derived.

Scarcely less important than the consolidation of the tribunals by which justice is administered is the subject of the simplification of the methods of legal procedure. This simplification has been twofold ; first, in abolishing the variety of *forms* of actions, and second, in substituting a statement and answer for the English system of pleading.

Theoretically, the English system of process and pleading seems to have been perfect. The writ notified the defendant of the general nature of the action in which the plaintiff alleged that he was answerable, and of the court in which he was to appear. The declaration contained a statement of the particular and specific wrong of which the plaintiff complained, and the subsequent pleadings were designed to eliminate such matters as were not disputed or were immaterial, and to bring the controversy down to the matter or matters in dispute, which were called issues. The trial of a cause consisted in the determination of these issues, the same being passed upon by a jury, if they were issues of fact, and by the court, if issues of law.

But, however perfect in theory, the system was liable to abuse or disarrangement in practice. Whether or not, with a body of perfectly trained lawyers, the ancient English system of pleading might not be the best in the world for the accurate and speedy administration of justice, is a question as to which a great deal could be truthfully said upon the affirmative. But the intricacies of special pleading, and the frightful consequences which ensued from the slightest mistakes in matters of form, were such as to call loudly for legislative reform, and accordingly, in England, at the present day, pleading and practice have been much simplified.

In this country still greater steps in this direction have been taken. Under the system of procedure which has been adopted in many of the old and nearly all of the new States in the Union, the case of a plaintiff is presented to the court in a brief, simple, and informal statement, and the answer of the defendant is of the same character.

Whether the results of this simplification of procedure have been altogether desirable, may possibly be doubted. That in many respects they have been beneficial, may be conceded ;

but in the method of presenting a case for decision by mere statement and answer, there is lost that precise and clear definition of the exact points in dispute which is found when the technical forms of the pleading of the common law are skilfully and carefully applied. Hence, in a great many instances, the trials of causes in this country are encumbered and prolonged by the introduction of a vast mass of irrelevant testimony which has nothing whatever to do with the issues really existing between the parties, and which serves only to confuse the jury and weary all concerned. This was a fault against which even the common-law system of pleading did not sufficiently guard, for the wide latitude for the introduction of evidence, which was permitted by the general issue, conducted, in a high degree, to uncertainty in ascertaining the real points in controversy, and to prolixity in the trial of a cause. Hence the necessity for the adoption of the rules of Hilary Term, in 4 Will. IV., in accordance with the recommendation of the Common-Law Commissioners, whereby the effect of the general issue was limited so that the questions raised thereby became less numerous and more precise. It may well be doubted, therefore, whether legislation presenting a simple statement and answer, in place of a scientific system of pleading, is altogether wise, and whether, therefore, the steps in that direction which have been taken in many of the States of the Union have not been steps towards *supposed* rather than *actual* reform. Undoubtedly this system of pleading *at large*, as it has been termed, has its advantages; it prevents, or certainly tends to prevent, any decision of the rights of parties on the ground of mere form, and by its simplicity, and the readiness with which it is mastered, renders causes less likely to miscarry through these slight formal errors, which should never, in a system where justice is fairly administered, be permitted to prejudice the real merits of a case. But it is plain that at some stage or other of a judicial proceeding, immaterial and admitted facts must be eliminated, otherwise the investigation would become hopelessly prolonged and confused; and it does seem to be better that, where the system of deciding upon questions of fact through the means of a jury prevails, and where juries are composed, as must always of necessity

be the case, of those who are untrained in the art of sifting evidence and discriminating the real points in issue between parties, some preliminary process should be invoked whereby the case should be presented to the jury in a clear, sharp, and well-defined manner. Under the Constitution adopted in Pennsylvania in 1874, parties are allowed, in certain cases, by consent, to have the facts as well as the law of the case determined by a judge, without the interposition of a jury. Whenever some such plan as this could be practicable, pleading at large might be allowed with advantage. A trained judicial mind, accustomed to the rules of pleading and evidence, able to discriminate clearly and promptly between such matters as are or are not material, and able, moreover, to hear without prejudice allegations which, though disadvantageous to one or the other of the parties, are purely collateral to the point in controversy, and not, therefore, to be fairly taken into consideration in rendering a judgment, — such a mind, we say, might well be trusted to hear the whole story, on both sides, in full, and to arrive at a sound and just decision. And this is just what is done by the method of pleading in equity. But such a system could not be introduced in a compulsory form without infringing upon that great and deservedly valued right, — trial by jury; and the surrender of such a right would be too high a price to pay for the great, but still comparatively inferior, advantage of untechnical pleading. Upon the whole, therefore, it may be concluded that the true principle of reform in this department of justice would be, to take the common-law system of pleading, to simplify it, to render it more precise in some respects, less technical in others; to reduce the number of forms of actions, and guard, as much as may be, against prolixity. In this way, perhaps, more desirable results would be obtained than are reached by the sweeping enactments in many of the States, by which technical pleading is completely abrogated and all forms of actions abolished.

Another plan would be to adhere to the system of a statement and an answer, and then to have the issues in dispute ascertained by a judge or a master, after which a reference to have them decided by a jury would follow, according to the practice which obtained in the English Chancery of having

issues of fact directed to be tried by a jury for the enlightenment of the conscience of the chancellor.

In carrying out the details of codification, efforts have been made in some of the States towards the simplification, or supposed simplification, of the rules of the common law in other directions besides these which have been already noticed.

The doctrine of Uses and Trusts, which had its origin at a very early period of the English law, was one of these legal principles which were imported along with the vast body of the law of the mother country into our jurisprudence.

This doctrine, whereby the complete title to property was supposed by a legal fiction to be divided or resolved into the two elements of legal title on the one hand, and equitable title, or beneficial ownership, on the other, is apparently of English origin (not having any exact parallel in any other legal system), and has been, as is well known, of the very first importance in the English law of real property, especially since the passage of the Statute of Uses of 27, Henry VIII. In fact, it is upon the Statute of Uses that the whole system of modern English conveyancing is based. Moreover, in the administration of justice the fictions of what are known as Implied, Resulting, and Constructive Trusts are employed for the purpose of carrying out certain equitable doctrines which thus employed constitute the machinery for the enforcement of a very large class of rights respecting both real and personal property. The subject has grown in the process of time to vast proportions and importance, and the law has become complicated, and in many instances difficult, and in a few cases contradictory. Legal literature comprises many treatises of great learning and research upon this difficult branch of English jurisprudence, and upon no subject are the decisions of the courts so numerous and important.

That reformers in law in this country should make some attempts to lop off a few superfluous branches from this wide-spreading growth was to have been expected; but in some States the axe has been laid to the root of the tree, and the whole doctrine of Uses and Trusts has been sought to be eradicated. Thus in New York the Revised Statutes abolished Uses, and confined Trusts within very narrow limits; and

similar legislation has been adopted in several other, principally Western, States. The advisability of so-called reformation in this particular is very questionable. The system of the law of real property must necessarily be, to a very great extent, artificial. The complex requirements of modern life in regard to the enjoyment and disposition of property could not otherwise be carried out. A forcible attempt to compel these transactions to be simple and uniform must, of course, be a failure; and to take away the legal machinery by which ends so justifiable and desirable have heretofore been carried out can be productive, in many instances, of nothing but embarrassment and confusion. That trust deeds under the English system have been prolix and complicated, is true; that the intention of the parties to such instruments may have in some instances been defeated by the very means by which they have been sought to be carried out, may be admitted; and it may also be conceded that, in the exposition of the doctrines growing out of the law of Uses and Trusts, unnecessary refinements and subtleties have occasionally crept into the law; but most of these objections are objections which are inherent in the nature of things, and proceed rather from the complex wants of men in relation to their property than from the means whereby the law has endeavored to carry them out. The true part of a wise legislation would seem to be to adopt the more patient and praiseworthy task of correcting the evils *in* the system, instead of the despairing process of abolishing the system altogether. Indeed, this last method of reform seems to be opposed to the proper spirit of the American intellect, which has always been to simplify, but never to destroy. The legislators of the country might well take a lesson from those who have to do with its mechanical arts, and remember how often American workmen have transformed the complicated and unmanageable machinery of their English cousins into models of simplicity and adaptiveness.

The criticism of a great American jurist and commentator upon this very subject is thoroughly wise and just. Chancellor Kent has said, "The attempt to bring all trusts within the narrowest compass strikes me as one of the most questionable undertakings in the whole business of the Revision. . . .

It is in vain to think that an end can be put to the interminable nature of trusts arising in a great community, busy in the pursuit, anxious for the security, and blessed with the enjoyment, of property in all its ideal and tangible modifications." And the same great writer truly says that the abolition of Uses can have no effect, "it is the abolition of a phantom."

Remarks similar to these which have just been suggested may also be made in reference to other attempts at reform which have been made in the law of Real Property in very many of the States. The rule in Shelley's Case, the rule which forbids the creation of legal freehold estates to commence in future, the rule which forbids the limitation of a remainder which will operate to abridge the particular estate, have all been abrogated by statute in many States. The policy of such a method of reformation may have been advocated by able men, and there may be much to be said in its support; but it is submitted with deference, that such a method is not that which is marked by the profoundest wisdom and foresight, and that it loses sight of one of the great ends of codification. The design of codification is to arrange systematically, harmoniously, and intelligibly such laws as have been found necessary to regulate civil conduct in a given society. Now if social relations are simple, the laws should be simple and few; and if by bad or careless legislation the laws have been *uselessly* complex, it is the business of the Revisory Code to lop off these excrescences. But where laws have become complex from the circumstance that the social relations which they regulate are intricate and varied, the difficulty is inherent in the nature of things, and no code or statute can *compel* simplicity in rules of civil conduct in such a state of affairs, any more than a foolish act of Congress could keep gold at par.

Other subjects which have engaged the attention of American codifiers — the rights of married women, marriage and divorce, evidence, insolvency, exemption laws — are well worthy of attention, but want of time and space forbids their discussion. From the review, then, of the tendencies of American jurisprudence considered with reference to the causes which have produced its peculiarities and controlled its development, we must pass, by way of conclusion, to a statement of the general

character of the results which have been attained. And as to these results we may say that they may be grouped under three general heads, in that the law in this country has, in the progress of its hundred years of life, become (1) more simple, (2) more humane, and (3) more adaptive. That it has tended to become more simple would seem to be sufficiently plain from the instances which have been given under the head of codification; of its increased humanity, the criminal code and the laws relating to married women are fair proofs; while the facility with which it has met the changes produced by the physical and political peculiarities of the country, and the nature of its institutions, is evidence of its adaptiveness.

The pathway which American law has pursued is one upon which we can turn our eyes with feelings of no little pride; and if the progress of our national jurisprudence has not always been in precisely the right direction, it has not wandered far from the way, and has certainly been no laggard.

G. T. BISPHAM.

ART. VI. — EDUCATION IN AMERICA, 1776-1876.

AT the close of the first century of the national existence, the advantages, necessities, and dangers of public instruction in the United States are such that the President begins and ends what is called his "Centennial Message" to Congress, December 7, 1875, with an appeal to the people for the support of the established system of common schools, and an emphatic recommendation that an amendment to the United States Constitution should be passed for the protection and promotion of this object of public concern.

He advises that "a Constitutional amendment be submitted to the Legislatures of the several States for ratification, making it the duty of each of the several States to establish and forever maintain free public schools, adequate to the education of all the children in rudimentary branches, within their respective limits, irrespective of sex, color, birthplace, or religion; forbidding the teaching in said schools of religious, atheistic, or pagan tenets, and prohibiting the

granting of any school funds or school taxes, or any part thereof, either by legislative, municipal, or other authority, for the benefit or in aid, directly or indirectly, of any religious sect or denomination, or in aid or for the benefit of any other object of any nature or kind whatever."

Within a few days after the presentation of this message, Mr. Blaine, the Republican leader of the House, introduced a bill which coincides in its tenor with the President's recommendation. His proposed amendment is this:—

ART. XVI. — No State shall make any law respecting an establishment of religion or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect, nor shall any money so raised or lands so devoted, be divided between religious sects or denominations.

General Grant's official utterance followed close upon a less formal expression of his opinions at Des Moines, Iowa, which attracted great attention in this country and in Europe. However accepted, these emphatic words from the chief magistrate of the Union are likely to call out, during the next few months, much educational discussion, and especially on fundamental questions in respect to the origin, growth, theory, methods, and results of public instruction in this country.

All investigators will find the task of reviewing the progress of American education during the last century peculiarly difficult. There is a great deficiency of historical and philosophical discussion bearing upon this subject; moreover, in consequence of the extreme decentralization which has governed the American policy in public instruction (as in other affairs of the State), the statistical and administrative reports, on which a thorough survey must be based, are scattered through many thousands of local reports, still uncollected and uncollated, and even, to a very considerable extent, not given to the press.

This great difficulty is balanced, however, by another consideration. Notwithstanding the diverse authorities under which instruction has been provided, the principles which

have guided the action of these public authorities are homogeneous. In details, in methods, in results, the system of education differs in every State, while in its outlines the system is the same from the Atlantic to the Pacific.

As an assistance to those, especially in other countries, who may seek to study the development of the American system of education, we enumerate some of the principal sources of information. Within the last few years a central agency, the United States Bureau of Education, has been established by Congress, in Washington, for the purpose of collecting, from every part of the country, information in respect to the condition of education, and of diffusing, as widely as possible, the information thus brought together.

This official bureau has been of great benefit to the country. Since its organization, in 1867, six annual reports have been published, besides a large number of special papers, or essays, officially called "Circulars." The first of the annual publications was issued by Dr. Henry Barnard, and the five succeeding reports were issued under the administration of the present indefatigable Commissioner, General J. Eaton, Jr., who entered upon his office in March, 1870.

Already the statistics which have been accumulated are sufficient for important comparisons; the schedules upon which the tables are prepared improve every year, and greater willingness to make exact returns is evinced by the local officers. At the same time, the Commissioner is so careful not to transcend his authority, and is so ready to communicate all the information collected in his office, that prejudices against any national expenditures for education are lessening, and those who oppose, as well as those who favor governmental action in such matters acknowledge the advantages of having at command trustworthy facts.

Private enterprise has to a remarkable degree remedied some of the deficiencies of governmental neglect. Dr. Henry Barnard of Hartford, to whom allusion has just been made, began in 1856 the publication of an "American Journal of Education," which, with various changes of form, has been continued to the present time. It now comprises twenty-four octavo volumes, including in all some twenty thousand pages, illustrated by one

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hundred and twenty-five portraits, and eight hundred cuts representing school buildings. Dr. Hodgson, a distinguished professor in the University of Edinburgh, has recently remarked that this publication "really contains, though not in continuous form, a history, and it may be said an encyclopædia, of education." It is the best and only general authority in respect to the progress of American education during the past century. It includes statistical data, personal reminiscences, historical sketches, educational biographies, descriptions of institutions, plans of buildings, reports, speeches, and legislative documents. For the first sixteen volumes an index is published, and for the next eight volumes an index is in preparation. The comprehensiveness of this work and its persistent publication under many adverse circumstances, at great expense, by private and almost unsupported exertions, entitle the editor to the grateful recognition of all investigators of our system of instruction. He has won a European reputation by this Journal, and in our own country will always be an indispensable guide and companion to the historian of education.

Many other periodicals have been published in this country, devoted to educational intelligence and discussion. A list of those which appeared after 1811 and prior to 1865 is given in Barnard's Journal of that year.

Since 1840 an attempt has been made to collect educational statistics in the decennial census of the United States, but the results have not been satisfactory in consequence of the different schedules which are employed for the registration of statistics in different States, the extreme diffusion of responsibility, and the confusion of educational nomenclature.

In the census of 1870 great pains was taken to discover the extent to which illiteracy is prevalent, and two maps were printed face to face with one another exhibiting the relations of wealth to education. In the Statistical Atlas prepared by the superintendent of the census, General F. A. Walker, the only educational charts are two; they exhibit the illiteracy of the entire population and the illiteracy of adult white males.

For the Centennial Exhibition in Philadelphia the Educational Bureau at Washington is making great preparations. It has enlisted the co-operation of school officers and associa-

tions in various parts of the land, and also of the administrators of colleges, libraries, art-schools, charities, etc., and other institutions, and by their aid will bring together, not merely an abundance of material things illustrative of educational methods and apparatus, but also manuscript and printed documents illustrative of the historical development of our American institutions. All this is projected on a very comprehensive scheme. If rightly discussed by those who prepare the official reports on the Exhibition, such collections will throw much light upon the merits and the deficiencies of all our agencies for the promotion of knowledge.

When the discussions for the support of the Educational Bureau were in progress, Mr. G. F. Hoar, upon the floor of Congress, declared that the only respectable account of education in this country ever published had been prepared by foreign governments. Among such reports, the most satisfactory is that of Rev. James Fraser, now the Bishop of Manchester, England, who came to this country in 1865, and employed six months in the prosecution of his inquiry, and four months in drawing up his report. This elaborate paper, like that of Mr. Matthew Arnold on the schools of France, Germany, etc., was presented to the Crown by the Scottish Commissioners of Public Instruction. It is a candid review of facts collected with great diligence and fairness,—all the better, because of the discriminating criticism with which it distinguishes the wise from the unwise, and because it appreciates right purposes and tendencies in this country even when results are not yet satisfactory.

Besides the Report of the Bishop of Manchester, the excellent study of Lavaleye, which appeared in the *Revue des Deux Mondes*, and was reprinted in a volume entitled *L'Instruction du Peuple*; the reports of a French Commissioner, *L'Instruction Publique aux États Unis*, par M. Hippeau; and the observations of Mr. Siljeström, a Swedish traveller, whose work was translated into English by F. Rowan; of Dr. Wimmer, a Saxon teacher; and of Mr. Hirkel, a recent Russian observer, are all noteworthy. In consequence of the recent educational discussions in England, much has been said in that country upon American schools,—among recent works, the more im-

portant being a volume on National Education by Rev. J. H. Rigg, and one on the American School System by F. Adams.

Having thus endeavored to point out the principal sources of information on which the historical inquirer must depend, we shall now take a rapid glance at the progress of education among us during the past century, in the three stages which are commonly known as "primary," "secondary," and "superior" instruction.

Unquestionably the most distinctive characteristic of American education is the prevalence of popular primary schools throughout the vast territory of the United States. The system upon which they are organized is a growth and not a creation. It was not imported from any European country. Its germ was planted by the earliest colonists, — but the tree which has sprung from the germ would amaze the original planters. Its development is not due to the arguments of any philosopher or the wisdom of any legislator. It has been gradually influenced by the ecclesiastical, political, and social requirements of the country. Theoretically it has many defects; practically it is adapted to the circumstances of the land. No European country is likely to adopt it; the Americans will not abandon it. It is the pride of the people; the satisfaction of the poor man, and the protection of the rich man. Its influence in the promotion of intelligence and prosperity in the Northern and Eastern States has been rated so high that every new State adopts it without question. We shall not endeavor in this article to trace to their sources in the Old World, the underlying notions of the colonists who instituted the system. It would be interesting to discover, if that were possible, how much may be attributed to a natural evolution from the social usages and laws of England, and how much from those of Holland. "It is a question of interest to Americans," says Dr. Francis Lieber, "how far the settlers of New England were influenced by their sojourn in the republican Netherlands. I throw out the question. It deserves a thorough, yet very plain and unbiassed inquiry." Doubtless the school history will illustrate this influence; but such an inquiry would take us quite too far away from the present century.

We shall not even attempt to distribute among the original colonies which constituted the Union of 1776 the honors which they may justly claim for an early devotion to the interests of education; but among all the official records there is none more worthy to be held in perpetual remembrance in the Republic than an order which was adopted in Massachusetts November 11, 1647. Its language will never be forgotten; its spirit is still vital in every part of the country. Its words are these:—

“It is therefore ordered, that every township in this jurisdiction, after the Lord has increased them to the number of fifty householders, shall then forthwith appoint one within their town to teach all such children as shall resort to him to read and write, whose wages shall be paid either by the parents or masters of such children, or by the inhabitants in general, by way of supply, as the major part of those that order the prudentials of the town shall appoint; provided those that send their children be not oppressed by paying much more than they can have them taught for in other towns. And it is further ordered, that when any town shall increase to the number of one hundred families or householders, they shall set up a grammar school, the master thereof being able to instruct youth so far as they may be fitted for the university; provided, that if any town neglect the performance hereof above one year, that every such town shall pay five pounds to the next school till they shall perform this order.”

Here is a plan involving local responsibility; state oversight; moderate charges or gratuitous instruction; provision for all and not for the poor alone; and a recognition of three harmonious grades,—the primary school, the grammar school, and the university.

Our theme restricts us to the development of education since 1776. There are many indications that, in the period of reconstruction which followed the Declaration of Independence, the necessity of education was distinctly recognized both in the councils of the State and nation. Dr. Barnard, in one of his papers, has brought together some of the more remarkable utterances on the relations of the national government to education which were made by Washington.

It is interesting to observe that in the mind of Washington there was a very distinct idea of the value of a national agency for the collection and diffusion of information. His words re-

fer to an agricultural bureau, but they are an exact description of the responsibilities of the educational bureau, created in 1867. He advises that a central agency be formed, "charged with collecting and diffusing information, and enabled by premiums and small pecuniary aids to encourage and assist a spirit of discovery and improvement. This species of establishment contributes doubly to the increase of improvement, by stimulating to enterprise and experiment, and by drawing to a common centre the results everywhere of individual skill and observation, and spreading them thence over the whole nation."

But the national government did not receive from the States the responsibility of providing a system of public schools. Each State in its own way engaged in the work.

When the new Constitution of Massachusetts was adopted in 1780, public education received full recognition. An article, the spirit of which was fully in accordance with the legislation of 1647, was adopted and still remains the fundamental law of the State. This oft-quoted enactment was drafted by John Adams, afterward President of the United States, who has left an entertaining statement of the circumstances which led to its preparation. Its first section confirms the rights of Harvard College; the second "encourages literature" in these words:—

"Wisdom and knowledge, as well as virtue, diffused generally among the body of people, being necessary for the preservation of their rights and liberties, and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of the legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them, especially the University at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions by rewards and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings, sincerity, good humor, and all social affections and generous sentiments among the people."

Mr. Adams informs us of his apprehension that "criticism and objection would be made to the section, and particularly that the 'natural history' and the 'good humor' would be stricken out, but the whole was received very kindly, and passed the convention unanimously without amendment."

Connecticut dates its system of schools from the time of the earliest settlements in Hartford and New Haven. "In the body of laws," says Barnard, "known as the code of 1650, 'the provisions for the family instruction of children, and the maintenance of schools by towns, are identically the same as in Massachusetts, and remained on the statute-book with slight modifications to give them efficiency for two hundred years.'" The charter of Connecticut, granted in 1662, remained in force till 1818, when a constitution was adopted which protects both the charter of Yale College and "the school fund," established in 1795.

The Constitution of New Hampshire, as amended in 1784, transcribes very nearly the exact words of that section of the constitution of Massachusetts which we have already quoted, on the encouragement of literature; but it is amusing to notice that the word "good-humor," which Mr. Adams introduced, was struck out in New Hampshire, and the word "sobriety" introduced in its stead.

Vermont in 1793 declared that a competent number of schools ought to be maintained in each town, and one or more grammar schools in each county of the State.

Rhode Island remained under the colonial charter till 1840, and Maine was not admitted to the Union till 1820.

The Constitution of New York, adopted in 1777, made no allusions to schools. In 1785, the Legislature created a Board of Regents of the University of the State, designed to promote and control academies and colleges, and in 1795 an act was passed for the maintenance and encouragement of common schools. In 1805, the school fund was established, and in 1812 the school law was adopted on which all subsequent legislation and progress have been based.

The growth of the school system in New Jersey was slow. The Constitution of 1776 did not refer to the subject. In 1816 an act was passed creating a school fund, which was protected

by the Constitution of 1844. It was not until 1871 that a general act providing an excellent system of state, county, and town supervision was adopted.

The second Constitution of Pennsylvania, adopted in 1790, requires the Legislature to provide for the establishment of schools throughout the State, in such manner that *the poor* may be taught gratis; and that the arts and sciences should be promoted in one or more seminaries of learning. This provision was repeated in the Constitution of 1838.

In the first Constitution of Delaware, adopted in 1776, but as amended in 1831, the Legislature is instructed "to provide by law for establishing schools, and promoting arts and sciences."

In 1779, Thomas Jefferson drafted a bill providing a public school system for Virginia, but it was not adopted till 1796, and then with a proviso which "completely defeated it." The first Constitution was adopted in 1776, the second in 1830, the third in 1851. In the latter it is provided that one equal moiety of the capitation tax upon white persons shall be applied to the purposes of education in primary and free schools.

In Maryland, there was no constitutional provision on education till 1864.

In North Carolina, in 1776, it was declared "A school or schools shall be established by the Legislature, for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may enable them to instruct at low prices; and all useful learning shall be duly encouraged and promoted in one or more universities."

In South Carolina the first provisions of education were in the amended constitution of 1839.

The western migration from New England to the Mississippi Valley and to the Pacific coast carried with it the New England school system. As each new State in the northwest was organized, a constitutional provision was made for schools, and in every State except Ohio, a university or high "seminary of learning" was included in the plan. The chronology is alone instructive: Ohio in 1802, Indiana in 1816, Illinois in 1818, Michigan in 1835, Iowa in 1846, Wisconsin in 1848, California in 1849, Minnesota in 1858, Nevada in 1864, successively introduced the common-school system.

Since the civil war was concluded, school systems in the Southern States have been reorganized and in most of them the essential principles of the "New England system" have been adopted.

There are numerous pictures extant of the New England schools as they appeared about the beginning of the century. Dr. Dwight, President of Yale College from 1795 to 1816, gives the following sketch of his own observations:—

"A stranger travelling through New England marks with not a little surprise the multitude of school-houses, appearing everywhere at little distances. Familiarized as I am to the sight, they have excited no small interest in my mind; particularly as I was travelling through the settlements recently begun. Here, while the inhabitants were still living in log huts, they had not only erected school-houses for their children, but had built them in a neat style; so as to throw an additional appearance of deformity over their own clumsy habitations. This attachment to education in New England is universal; and the situation of that hamlet must be bad indeed, which, if it contain a sufficient number of children for a school, does not provide the necessary accommodations. In 1803, I found neat school-houses in Colebrook and Stewart, bordering on the Canadian line.

"The general spirit and scheme by which the education given in parochial schools (for such I call them) is regulated throughout the New England States are substantially the same."

He has also left on record many interesting observations upon the schools of Connecticut as they were familiar to him about the year 1801. Children living at a distance from the school-house, he tells us, were not sent to school till they were four years old; those near by were frequently sent at two! The girls, he says, generally leave school at twelve or fourteen. There is scarcely a child in the State who is not taught reading, writing, or arithmetic. Poverty has no effect in excluding any one from education.

We have also the following picture of schools in Massachusetts, sketched by a recent historian.

"The laws for promoting public instruction were attended with more favorable results; and recommendations were made by the governor for the appropriation of lands in the district of Maine for the support of the schools and the gospel ministry in that part of the State, and for a grant to Harvard College, whose funds were inadequate for the sup-

port of its instructors. The establishment of academies, also, dates from this period ; and a number of these seminaries were incorporated by the Legislature. By the laws of 1789, all towns in the State having two hundred families were required to support a grammar school, agreeably to former usage, and, in addition, were ordered to employ for instructors of youth, those who were educated at some college, and were able to teach the Greek and Latin languages. In towns where the inhabitants were less, it was required that such as were qualified to teach the English language correctly should be engaged in the business of education. By a 'traditionary blindness' as has been 'charitably assumed, our early fathers did not see that females required and deserved instruction equally with males,' hence the 'first provisions for primary schools were confined chiefly to boys.' But light soon broke in, and girls were 'allowed to attend the public schools two hours per day.' With this point gained, the revolution in public opinion was rapid and encouraging ; and, before the close of the eighteenth century, in nearly every town provision was made for the education of girls, especially in the summer." *

We come now to consider more in detail the main characteristics of this system of schools which has become a continental institution. In the first place it was based upon the principle of local responsibility. Each town was expected and required to maintain such schools in number and in character as its own inhabitants needed. The determination of school taxes or rates, the construction of school-houses, the selection of teachers, the choice of school-books, the limitation of school sessions, were local questions. The great advantage of this plan was its encouragement of personal responsibility among parents to look after the training of their children. It secured the popular devotion to the school system as it never could have been secured if the schools had been maintained by any central authority.

But as years rolled on the smaller and poorer towns failed to do justice to themselves ; and in the larger and richer towns private schools attracted the children of wealthy families, so that the common schools were attended chiefly by the needy and were in consequence neglected. Thus it came to pass that the supervision of the State government was invoked ; and

* Barry, *Hist. of Mass.*, II. 322.

partly by money appropriation from a school fund, and partly by stringent laws, and partly by the moral influence and encouragement of State Boards of Education and superintendents of schools, the intelligence of an entire State was brought to bear on the school system in every hamlet and village. No school district was so obscure as to escape the oversight of the central authority. The aid of comparative statistics was invoked, and the light of publicity was thrown upon every nook and corner. In order to remedy definite faults, specific legislation was secured, or specific privileges were granted, and thus the statute-books became full of cumbersome and unintelligible enactments which gave rise to many disputes and still more embarrassing interpretations of the law. It was a slow process in Massachusetts, Connecticut, New York, New Jersey, and others of the older States to arrange an orderly body of laws, pertaining to public schools throughout the State, adapted both to large and prosperous towns and also to small and thinly settled districts in the country. From these difficulties the older States have not yet completely emerged, but in every State of the Union either the constitution or the law now recognizes the need of some form of general supervision.

As the new States of the West and the Northwest were organized, the national government required that a considerable amount of the public lands, within each territorial limit, should be reserved for public education, and thus the common-school system, usually culminating in a high "seminary of learning" (which came to mean "a State university"), was secured to the interior and Pacific States. But the national government did not dictate nor regulate the details of the system in any part of the land; and the State governments, as they were organized, were careful to preserve the local responsibility of subordinate districts,—though they profited by the experience of the older States and reserved to the central authority an adequate power of superintendence. It is only within the last decade that the United States government has undertaken even to collect the facts which exhibit the results of its generous land-grants. This it now does with admirable results, but it carefully avoids every measure which seems to imply national superintendence.

Again, the system is extremely elastic. There is no fixed limit of age or acquisition at which public instruction ends. Usage varies in different places. In many of the older States secondary education is, to a considerable extent, in the hands of private teachers, and endowed or corporate academies. In the West, not merely "secondary," but also "superior" institutions, including even the professional schools, are a part of the system of the State. On the other hand, there is many a town in New England where the effort to establish a public high school meets with earnest opposition from those who honestly think that the public should not attempt to provide anything more than the simplest elements of an education. The advocates of high schools claim that their influence is powerful on schools of lower grade; that there is no possibility of drawing an exact and invariable line at which instruction must cease; and that the earliest New England usages, never theoretically abandoned, included grammar schools as intermediate between the primary school and the college. The opponents, with much emphasis, declare that the State does not teach well the higher branches, which should therefore be left to voluntary agencies.

The principle appears to be, that the extent to which public education may be provided in any community must depend on the wealth, the wants, and the wishes of that community. The decision will be governed by the intelligence and enterprise of the inhabitants, and by the presence or absence of endowed academies or satisfactory private schools. During the last twenty-five years there has been a remarkable increase of high schools, and some of them, like those of New York, Baltimore, Philadelphia, etc., are as worthy of the name of college as most institutions which bear the name.

Again, instruction in the public primary schools is now free in nearly, if not quite, every State. Many friends of popular education believe that it would have been better to retain the custom of a slight charge for tuition; but the school superintendents have been nearly unanimous in advocating the removal of all pecuniary restrictions, and the magic of the name "free schools" has been quite irresistible.

Another distinctive feature of the American school system

is the absence of all class distinctions, ecclesiastical control, and social limitations.

The schools are avowedly open to all. In many places they are attended by pupils who come from the humblest and from the most refined and wealthy families. In the South, different school buildings are provided for blacks and whites; but in the North, where the number of blacks is small, this distinction is not made. In many places the girls are taught in separate buildings from the boys. But, notwithstanding these limitations, it may be said that the public school, in theory, recognizes no class distinctions.

Sectarian instruction is not permitted in the schools. Early in the century, before the Catholics were numerous, there was no dissent to the reading of the Bible, and to other religious instruction which was free from a denominational or proselytizing character. But the growth of the Catholic population has been accompanied by strong protests against the prevalence of Protestant instruction, and unquestionably the tendency is now to omit from the schools all religious instruction, excluding even the reading of the Bible and the singing of devotional hymns.

To many religious people this is a source of deep regret, and leads them to question seriously the value of such schools. To many others it is a source of congratulation, for they believe that the proper agency to convey religious instruction is not the public school, but the religious society.

The chief danger which threatens the common-school system is unquestionably this difference of opinion in respect to religious instruction, and the solution of the problem must be awaited with anxiety by all good citizens.

We must frankly admit that when the colonists of Massachusetts and Connecticut were of one faith in religious affairs, they did not hesitate to teach that faith in the schools and colleges which the State maintained or encouraged. Their early utterances indicate clearly the religious motives which governed the foundations of these new commonwealths. So long as the inhabitants of any town or State were exclusively Protestants, there could be little or no objection to the perusal of the authorized version of the Bible, the singing of hymns,

the offering up of the Lord's Prayer, or some other simple invocation at the teacher's discretion. The slight objections which were sometimes felt to this course of procedure did not take the form of organized opposition or employ the methods of political agitation. In those communities and school districts where the Protestant element is still almost exclusively prevalent, little, if any, opposition is yet made to these simple Christian influences. They are quite free from ecclesiastical authority, and are usually free from bigotry, and from proselyting tendencies. As the common-school system was extended over the land, the brief and simple religious exercises to which we have referred continued to be the practice. But when the Catholic immigration began to add its myriads to our shores, and to manifest its influence in political affairs, the common school was attacked as a Protestant agency, hostile in spirit to the Catholic Church. When the Protestants replied that nothing was taught in the schools but those fundamental notions of religion on which the Christian world, Catholic and Protestant, agreed,—the Catholic leaders centred their attack upon the use of King James's version of the Bible, which they claimed could not be permitted to the Catholic pupils. It was in their view a Protestant, a sectarian, an imperfect translation of the Scriptures,—proselyting in its influence, and dangerous in its tendencies. In this view the Catholics were doubtless consistent and sincere. All attempts to reconcile their differences with the Protestants have been local and temporary. In some places the Catholic scholars have been so few that the question has not been agitated; in some, the Rheimish version and King James's version have been permitted in the same school-room; in some places the Catholic scholars have not been required to attend until after the opening "devotional exercises" were concluded. In some places, especially in large cities, the Catholic scholars, by a "natural selection" have assembled in certain schools, where Catholic teachers have been employed, and the Protestant scholars have been gathered in other schools and taught by Protestant teachers. But neither Protestants nor Catholics have regarded these arrangements as anything more than temporary expedients. When some of the more liberal Protestants have proposed to omit all religious instruc-

tion, including even the reading of the Bible, they have been attacked as the advocates of “godless” schools; and have not only incurred the sarcasm of the Catholic leaders, but have lost the support of many devout Protestants, who have claimed that to omit the Bible-reading would be to undermine all religious authority, and open the way to avowed infidelity and atheism. In vain is it said that the perusal of the Scriptures in the public schools has become a form, with little vitality, — that it is only a symbol of religious faith, — that it is a most incomplete and inefficient mode of providing religious instruction which can only be properly given by the family and the church; in vain is it said that the only solution of the difficult problem, the only basis on which the common school can be maintained, is the restriction of public instruction to secular topics. The rigid Catholic declaims against such “godless” schools; and the rigid Protestant declares that he “won’t give up the Bible, God’s precious book of truth.” In New York, Chicago, Cincinnati, San Francisco, and other large cities, this controversy has been in progress for many years, at times allayed by temporary expedients or by the silence of policy; at times aroused to fierceness by a “Native-American” political party or a “Know-Nothing” movement.

Recently, and especially in Ohio, this controversy has gone beyond the limit of the city and town, and has become an open and controlling element in a State election. It bids fair to become a national question. No one who studies the Vatican syllabus, the utterances of Catholic writers, and the movements of European politics, can doubt that this question is likely at an early day to agitate our whole country.

The first century of the Republic closes with this “impending conflict” in respect to popular education. As we review the situation we find six possible resultants of the controversy.

1. The present undefined usages may be continued, — unsatisfactory to every religious body, and leading to frequent and bitter controversies. This is no plan.

2. Religious instruction and worship may be omitted in public schools, and provided, more efficiently than now, in Sunday schools, churches, and families, — upon a purely voluntary system. The separation of Church and State, an American

discovery in political science, works well and receives the approval of Catholics and Protestants, though great apprehensions were felt by religious people when the European usages were in this particular thrown off. The theory is not fully carried out until church influences are excluded from the control of public schools. This solution of the problem may be called the American plan.

3. Religious instruction may be given in public schools by special teachers of religion appointed for the purpose by religious associations of different denominations; but this teaching is to be restricted to appointed hours, and parents must be free to determine to whose instruction their children may be sent,—or whether they shall be excused altogether from attendance. This may be called the German plan.

4. The leaders of ecclesiastical organizations may unite in adopting a scheme of religious instruction which shall omit the essential differences of faith, and present the principles of a pure and upright life. From its employment in Ireland, where the Protestant and Catholic parties have been peculiarly hostile to one another, this arrangement has been named the Irish plan.

5. The public-school funds may be distributed upon some just basis between the Catholics and the Protestants, and between the different bodies of the Protestants, so that each religious organization may have its own day-school, and conduct religious instruction in its own way. This may be called the Catholic plan.

6. The State may absolutely abandon all charge of public education, as it does of religious worship. This may be called a Barbarian plan,—for it would surely tend among us to the “Barbarism of Ignorance.”

Of these six possible courses for the American people to pursue but one seems probable. It is that which we have termed “the American plan.” No one can follow the history of our institutions without seeing that from the settlements at Jamestown and Plymouth until now there has been a constant tendency toward its adoption. Church and State were originally united here as in Europe; gradually the spheres of political and ecclesiastical action have been defined; they still

conflict upon the question of religion in common schools; and it seems to us clear that the civil authority will not, either from justice or policy, much longer insist upon religious instruction when it is obvious that such instruction is obnoxious to large numbers of voters.

The alternative likely to be presented is what we have termed the Catholic plan. It is thus described in the "*American Educational Monthly*," and in the "*Catholic World*" for February, 1869:—

"The Catholics of this country, on account of their religious principles, cannot avail themselves of the public school system as now organized, although they contribute largely to its support by their taxation. They do not interfere with that system. . . . They simply ask that they may be allowed to participate in the only way open to them, — that is, by the apportionment to them of a ratable part of the funds, in aid of their existing schools, and of such others as their numbers in any given locality may appropriately enable them to establish, subject to the limited supervision of the State, as we have before claimed." (Page 696.)

The chief defect which has been charged upon the American school system is, if true, a very serious fault. It is asserted that it does not train the intellectual and moral character sufficiently; that it conveys knowledge rather than power, facts rather than principles; that it is superficial and inadequate. It is claimed that this is the result of employing text-books to an exorbitant extent, substituting them for the oral instruction of accomplished teachers. It is further claimed that time which ought to be given to study is wasted in general exercises and formal ceremonies, such as marching and singing.

In a thoughtful paper on the theory of American education, Dr. W. T. Harris, of St. Louis, makes an original and philosophical, if not wholly satisfactory, defence of the prevalence of text-book education in this country, as distinguished from oral teaching. He claims that among us there is a more explicit recognition than elsewhere of the principle that education is important, not so much for what it does for the pupil as for what it enables him to do. The American theory, he says, is this: The sooner we can make the youth pursue

his course of culture for himself, the sooner may we graduate him from the schools; and herein is the cause why university education is not so prominent in this country as in Europe. The printed page, he continues, is the medium, and the capacity to read and understand it is the initiation required to enter into this realm of spirit. We give the pupil the benefit of a perpetual self-education. With these outlines, he can inflate indefinitely his latent powers. Hence the library becomes what the university was of old. The pride of America is her self-educated men. The evils of the text-book system, great as they are, are not to be compared with those of the oral method. Self-determination is aimed at in our schools, not only in the theoretical spheres, but in the sphere of the will.

In another connection, when addressing an association of German teachers at Hoboken, Dr. Harris defended the American system of education against the criticisms of that body of educators: They charge upon our schools, said he, an inadequacy, evinced by official depravity and the corruption of public morals, and attribute this inadequacy to our American methods of teaching, and, in particular, to the exclusive cultivation of the memory. Dr. Harris, on the other hand, believes that the inadequacy is consequent upon the peculiar social condition of the United States, the new synthesis of nationalities forming here, the great possibilities of wealth, and the attempt to solve the problem of self-government by means of universal suffrage.

In another paper, he defends the morality of our public-school system in these terms: The pillars on which public-school education rests are, behavior or deportment, and scholarship. Good order is the first requisite, and this involves punctuality and regularity; silence, as a basis for the culture of reflection; truth and justice; and, finally, kindness, or the love of mankind.

The greatest difficulty which the American school system has encountered is to overcome the ignorance of the freedmen of the South. Before they were given the right of suffrage this objection to its bestowal was foreseen, and earnest attempts were made to establish an educational restriction, at least to insist on the ability to read, which is a requirement of all

electors in Massachusetts and Connecticut. Such efforts in Congress were unsuccessful, and in only one Southern State, Missouri, has such a provision been introduced into the Constitution. In various ways the subject of common-school education at the South has been brought before Congress, and various plans for its promotion have been presented and advocated by Mr. George F. Hoar, Mr. Munroe, and others (most of them based on an appropriation of public lands), but the difficulty of adopting any scheme which will suit the peculiar condition of Southern society, and yet interfere with none of the usages and rights of the North, has prevented national action. The munificent gifts of Mr. Peabody, for the encouragement of schools, wisely administered by Dr. Barnas Sears, and other private efforts, have alleviated, in some places, the local disabilities, but private labors are quite inadequate to remove the illiteracy. The promotion of popular education rests, therefore, with the voters of each State, and among them the extremely ignorant are so numerous that grave apprehensions must be felt in respect to the results.

In concluding this review of public primary education, let us sum up the chief points to which we have called attention. From its New England birthplace, the common school has gone to every State and Territory. In its main features, the system is homogeneous throughout the continent. It is based on local responsibility and State supervision, supplemented by the co-operative agency of a national statistical bureau of education. The system is elastic, being sometimes restricted to primary schools, and sometimes expanded to include the schools of every grade, not excluding the university. Instruction is free, unsectarian, non-partisan, and open to all, without distinction of race, birthplace, or social standing. The chief danger of the system, in our opinion, is the religious objection to it; its chief defect, a want of thoroughness; its chief difficulty, the peculiar condition of affairs in the South.

The statistics illustrating the condition of the system are too voluminous to be quoted here, and, fortunately, they are put within the reach of everybody by the United States Commissioner's Reports; but the following brief summary may be convenient for reference.

It appears that the school population of the entire country, including Territories as well as States, is, as reported, nearly fourteen millions; but the figures are only approximate, for, in some cases, the school age is regarded as ending at twenty-one years, and, in others, at fifteen years; while beginning at four, five, and six years. The number of enrolled scholars is a little over eight millions. The estimated number of children between six and sixteen years of age is ten and a half millions; the number of teachers employed, two hundred and forty-one thousand three hundred. The number of female teachers is nearly twice that of male teachers. The total annual expenditure of the public schools is very nearly seventy-five million dollars, and the estimated value of buildings and other school property, one hundred and sixty-six million dollars, so far as reported; but from twenty States, including Massachusetts and Connecticut, no returns are given.

It is commonly conceded that, taking into view the entire country, secondary instruction, or that which is intermediate between elementary and collegiate, is the weakest part of the system, and this notwithstanding very early efforts to establish grammar schools and academies, and, in later days, the foundation of excellent public high schools. One of the first benefactors of American education was Edward Hopkins, who provided, by his will, in the middle of the seventeenth century, for the maintenance of grammar schools, to fit boys for college, in Hartford, New Haven, Hadley, and Cambridge. His bequests are still vigorous in their influence. The Boston Latin School is another primeval foundation which has been strong and growing since the days of Ezekiel Cheever.

Prior to the Revolution, it would appear that good intermediate schools were few in number. "Dummer School," at Byfield, established in 1763, was exceptional; it was, as Charles Hammond well said, "the best type of an English grammar school that had existed on American soil since the days of Ezekiel Cheever." Near the close of the war a new impulse was given to classical education by the endowment of an academy at Exeter, by John Phillips, in 1781, and of its compeer at Andover, one year earlier, by the same benefactor

and his family friends, — two of the most serviceable of all American gifts. Leicester Academy was a kindred establishment, begun in 1784; New Ipswich dates from 1789. We cannot dwell upon these facts; their influence has been well set forth by Taylor, Cleveland, Washburn, Bacon, Barnard, and especially by Charles Hammond in his historical sketch of New England academies, where an admirable defence is given of the principles which have governed their maintenance. In due time the academy became a part of the legal school system of Massachusetts, — it spread through New England; it extended to New York. Feeble enterprises, joint-stock companies, inadequate funds, brought the system into ill repute; and when the revival of public schools took place, between 1830 and 1850, high schools, based on the earliest notion of grammar schools, maintained at public expense, superseded, in many places, the academies maintained by endowment and tuition fees. It was one of the watchwords in Connecticut, that "our public schools must be cheap enough for the poorest; good enough for the best." Yet the strong-endowed schools, like those just named, and like others at Munson, Easthampton, Groton, and elsewhere, never lost their place in public esteem. A noteworthy return to the academy principle (modified by the free-school idea) was seen in the establishment of a free academy at Norwich, in 1856. The story of this undertaking, as told by its promoter, Rev. John P. Gulliver, is a very good illustration of the vibrations of opinion, in an intelligent New England town, between the endowed school, the private school, the public high school, and the academy. Private seminaries, both for day-scholars and boarders, have, to a considerable extent, supplemented the lack of good public high schools and academies. Within the last twenty years, especially in cities and large towns, the public high school, both for girls and boys, has become the favorite method of securing secondary instruction. In the Western States this is not merely the favorite, it is almost the only prevalent plan. Its influence upon classical education has not generally been favorable (though there are noteworthy exceptions to this remark), and consequently, in many of the Western colleges, preparatory departments are found to be indispensable, while

in many of the Eastern States the promoters of college education are earnest and frequent in the advocacy of better means and greater facilities for passing beyond the elementary schools into the colleges. Dr. Harris of St. Louis has published a paper, in which he discusses the failure to connect the lower with the advanced seminaries.

Passing now to the subject of superior education, we find at the commencement of the Revolution that there were nine colleges established in eight of the thirteen colonies. Three of them were instituted prior to the seventeenth century, and for nearly fifty years the trio stood alone; six were founded between 1746 and 1776. The origin of Harvard in 1638 is almost coeval with that of Massachusetts; that of Yale goes back to the early days of the New Haven Colony, though its foundation dates from 1700; William and Mary was begun in 1693. New Jersey was first to follow the example of Massachusetts, Virginia, and Connecticut, in the establishment of Nassau Hall at Princeton, and was the first of the colonies to duplicate a college, which was done by the foundation of Queens now Rutgers College in New Brunswick; New York was the second to act, by the foundation of Kings now Columbia College; then came Pennsylvania, with the University at Philadelphia, the colonial metropolis; Rhode Island was next, with its college at Providence; and New Hampshire was not far behind in the enlargement of Wheelock's Indian charity school, and the foundation of Dartmouth College. Some future poet or mythologist may personify these as the nine colonial muses.

These institutions were colleges of an English parentage and model, not Scotch nor Continental universities. They were schools of rectorial and tutorial supervision, not of free professional instruction. They were disciplinary in their aim, and had more regard for the general culture of large numbers than for the advanced and special instruction of the chosen few. They were also, to a considerable extent, ecclesiastical foundations, — finding the churches and ministers their constant and sometimes their only efficient supporters. Harvard, Yale, and Dartmouth were controlled by Congregationalists; Princeton was founded by the Presbyterians, and New Brunswick by the Dutch Reformed; William and Mary was emphatically a child

of the Church of England, and Kings or Columbia College was chiefly but not exclusively governed by the Episcopalians; while Rhode Island College (now Brown University) was under the patronage of Baptists. These seminaries were also of religious aims. Usually the education of ministers was avowed as one of their chief objects. Sometimes, in the earlier days, the christianization of the Indians was distinctly kept in mind (though with the most meagre results) as it was in the romantic project of Berkeley for his college in the Bermudas. Religious and theological instruction was deemed an essential part of the education of every one, — but not in an exclusive or narrow sense. The colonists believed in the Scriptures, and insisted upon orthodoxy in their principal teachers; but they favored liberal culture, — the study of languages, philosophy, physics, mathematics, — and without the slightest hesitation encouraged, as far as their slender means would allow, every branch of learning.

But there was a civil as well as an ecclesiastical element in most of these foundations. Harvard and Yale were chartered and to some extent controlled by the colonial governments of Massachusetts and Connecticut, and were for a long time nurtured by appropriations from the public chest, as Michigan, California, and other western universities are now. The declarations of the original supporters of these colleges indicate a desire to train up young men for the service of the State, not less distinctly and emphatically than the desire to provide an educated ministry. Individual aid was also expected and invited, and the names of Harvard and Yale perpetuate the remembrance of such generous gifts.

Hence, these nine colleges were nurseries of virtue, intelligence, liberality, and patriotism, as well as of learning; so that when the Revolution began, scores of the most enlightened leaders, both in the council and upon the field, were found among their graduates. The influences of academic culture may be distinctly traced in the formation of the Constitution of the United States, and in the political writings of Adams, Hamilton, Jefferson, Madison, Monroe, and many other leading statesmen of the period. A careful student of American politics has remarked that nothing more strikingly indicates the influ-

ence of the education given at Cambridge " than the masterly manner in which difficult problems of law and government were handled by those who had received their instruction only from that source.

Soon after the Revolution was over, new colleges were projected. Between the close of the war and 1800, seventeen such institutions were organized, — three in Maryland (St. John's, Washington, and Frederick); one in Massachusetts (Williams); one in New York (Union); one in Pennsylvania, at Carlisle; two in South Carolina, at Charleston and Winsborough; two in Virginia (Hampden Sidney and Lexington); and one in the District of Columbia, at Georgetown. Four of the Southern States, North and South Carolina, Georgia, and Tennessee, instituted universities, which bore in each case the name of the State. These made a total of twenty-six colleges, kindred in organization and plans, imperfectly endowed, abounding in aspirations, sustained by sacrifices, restricted in scope, — all under way in the year 1800. Instead of maintaining one strong institution in each State, and giving up the points of difference (usually ecclesiastical or theological tenets which had not the slightest bearing upon classical or mathematical or scientific culture), the friends of higher education entered upon a rivalry which, in some States, was fatal, and in some injurious, to the cause they advocated.

The colonial mode of growth has been perpetuated from those days until now. In 1875 the Commissioner of Education reported the names of 374 institutions, mostly called universities and colleges, which are legally entitled to confer academic degrees, — besides independent schools of law, medicine, and theology, of which there are 106, and colleges for women, of which there are 65; so that there are known and recorded 545 degree-giving institutions within the United States. Most of these colleges are inadequately endowed, and consequently the instruction which many of them offer is of a very secondary character. A very large part of them represent some sectarian or denominational opinion; some of them have little more than a name, a charter, and a bias. The city of Nashville is reported to have four colleges; the State of Oregon, seven; Kansas, eight; California, eleven, besides a

State university; Iowa, eighteen; Ohio, thirty-six, including the Toledo University of Arts and Trades. Thus we see that to-day, the three colleges of 1700, the nine colleges of 1776, the twenty-six colleges of 1800, have multiplied far beyond all expectation, and every year new candidates seek admission to the lists.

In reviewing these figures of 1875, it is well to dwell upon the characteristics of the earliest American colleges, because institutions, as well as individuals, exhibit hereditary tendencies; and in reviewing the history of the century it is easy to see how the colonial notions of college organization have affected advantageously and disadvantageously the higher education of the country, even down to our own time. The graduates of the older colleges have migrated to the Western States, and have transplanted with them the college germs. Illinois bears witness to the zeal of its college band; California owes much to a New England scholar, Henry Durant, who went there, as he said, "with college on the brain," and lived till he became the head of a State university; Oregon has its kindred pioneer; and every Western State can bear witness to the zeal for learning which has been manifested within its borders by enthusiastic teachers from the East. The Western College Society can show a record of generous offerings in money, and of still more generous offerings in intellect and exertion, expended during the last half-century in building up Western colleges upon the colonial model. These institutions have contributed largely to the material and social prosperity of the newer States, and have made it possible to build up the common-school system, and to provide in cities and large towns, churches, libraries, high schools, newspapers, and other means of social enlightenment.

If these numerous colleges had been called academies, or high schools, or collegiate seminaries, or gymnasia, everybody at home and abroad would have applauded their organization, and would have regarded their maintenance as one of the glories of the Republic; but because they are called by the same name as Harvard, Yale, Princeton, Columbia, and other rich and well-manned colleges, they appear to disadvantage by comparison, and it is not uncommon to hear them spoken of

in terms of collective depreciation. But it should be borne in mind that they could not have been called into being except by the magic name of colleges, which suggests to the educated and enlightened American an idea, inherited from the colonial days, for which he will contribute labor, time, thought, and money.

When we review the list of several hundred degree-giving institutions reported by General Eaton, we may indeed regret that so many of them are feeble, and that so many are exponents of denominational zeal rather than of intellectual life; we may desire to see some remedy for their distracting influences; but we can hardly fail to admit that with all their deficiencies they have cherished the love of higher education in regions remote from the older seats of learning. Without the remembrance of the traditions on which they are based, it would be difficult to comprehend the extraordinary phenomena of sectarian colleges, so creditable in one point of view, so discreditable in another.

When the sectarian or denominational colleges plead the example of the nine pre-revolutionary institutions as favorable to this plan of organization, the advocates of State universities point to the origin of Harvard and Yale Colleges, which were aided and controlled in all their early years by the colonial legislatures.

We entertain no doubt that the growth of State universities in the West has been a healthy reaction against the multiplicity of sectarian colleges. This subject has been recently discussed in these pages, and so requires but a brief reference here. Congress, in creating new States in the Western territory, set apart in each of them a portion of the public domain for the maintenance of a seminary of advanced learning, which in due time became the State University. The University of Michigan has been the most successful of these undertakings, and has survived so long that it now numbers hosts of defenders and supporters among its graduates scattered through the State. The universities of Wisconsin, Iowa, Minnesota, and California are also in vigorous condition, though more exposed to the danger of popular interference and of temporary dissatisfactions.

The desire for sectarian colleges has not yet vanished, for within a few years past, in the oldest and in the newest States, large gifts have been made for the foundation of new denominational seminaries. Yet there are strong tendencies away from this idea. Harvard College has by successive steps become freed from its denominational character, except in its theological school, and it is in affiliation with an Episcopal divinity school. It is classed as "non-sectarian" in the Report of the United States Commissioner. Yale College has opened the seats of the corporation to representatives of the alumni, and they are chosen without any regard to their denominational character. Cornell University is avowedly non-sectarian. So are the State universities of the West. So is the new foundation of Johns Hopkins in Baltimore. No scholar can doubt that this tendency is favorable to the advancement of learning.

President White of Cornell University, who has had an unusual familiarity both with sectarian and non-sectarian colleges, urges as a remedy for the present distracted state of higher education that, "in the older States public and private aid should be concentrated upon a small number of the broadest and strongest foundations already laid. In the newer States, State aid should be regularly and liberally given to State institutions for the highest literary, scientific, and industrial instruction, to fully equip them, and to keep them free from sectarian control." Dr. McCosh, in his inaugural address at Princeton, proposed that the colleges of each State should be associated as one university, somewhat after the form of the Queen's University in Ireland, and this proposal is favored by others; but no measures have been taken looking in this direction.

The typical American college has been a place where a prescribed course of study, largely devoted to Greek, Latin, and mathematics, with a brief introduction to historical, political, and ethical sciences, has continued during four years, and led to a bachelor's degree. Daily recitations, residence within college walls, and religious worship Sundays and week-days, have also been maintained. One of the first innovations was made when the University of Virginia allowed its scholars to

elect their own courses, gave prominence to examinations, and laid no stress upon the system of four-year classes. Nearly half a century later Cornell University sprung at once into great prominence, by the freedom with which it threw off traditional fetters, allowing great freedom of choice of study, introducing abundant means of illustration and practical laboratories, engaging non-resident professors of distinction to supplement the ordinary teachers, and favoring technical instruction in the useful arts as well as general instruction in the liberal arts. Yale College has maintained the old curriculum, but side by side has successfully promoted, for a quarter of a century, new courses of study in the modern sciences. Brown, Rutgers, Dartmouth, Princeton, and others of the older colleges maintain schools of science akin to the Sheffield School at Yale. But by far the boldest innovations which have been made in any American college, are those inaugurated at Harvard under the administration of President Eliot. The interior working of the institution has been remodelled, and great freedom of choice (extending to the modern departments of science, as well as to the various branches of literature, history, and philosophy) is now permitted to every student, with results which appear to have dissipated nearly all doubts as to the wisdom of the plan, and to have attracted increasing numbers of students.

These modifications of the American college are likely to be attended with the best results, for they accord with the best experience of other countries. Moreover, there was great danger, a few years ago, that the colleges were losing their hold upon the community. The laborious and thorough researches of President F. A. P. Barnard of New York, a few years ago, showed that the proportionate number of students attending college has been gradually lessening, instead of increasing as it should with the increasing wealth of the country. It would be an excellent service for the Department of Education to continue the inquiries which have been so well begun. The modern congressional and legislative assemblies include but a very small number of college-bred men. The prizes of life — honor, fame, wealth, and opportunities of public usefulness — have largely been distributed among those who are not

alumni of any but the common school. Even in science and literature many of the most successful workers have been taught in no college. Those educated men who have been trained in college have often exhibited a reluctance to engage in the rough conflicts of life; modern politics have disgusted them,—the caucus has been abhorrent to them. In all this, there was grave reason for apprehension; but still the belief in the value of a liberal education is deep-seated among intelligent Americans; generous men like Lawrence, Sheffield, Buckingham, Packer, Green, Cornell, Hopkins,—including several who were never enrolled as college students,—have largely increased the funds for higher education, and with increasing means the colleges are providing, at the present day, better instruction than ever before; the number of graduates is increasing; and unless we are mistaken, they were never so well fitted as in these days to take an active part in the improvement of mankind, in the promotion of science, and the conduct of political and civil institutions.

It thus appears, as we review the situation of American colleges at the close of the first century of the Republic, that there are a few institutions in the United States, governed by private corporations, and endowed with capital varying from half a million to five millions of dollars; a few vigorous State universities in the West, governed by popular or legislative control, and supported partly from the income of public lands, partly by public bounty; and about three hundred small and ill-endowed colleges, some of which are doing excellent work, while many of them seem to have no reason for their existence. In the better colleges, the tendency is usually away from sectarian influences; in the poorer colleges, sectarian fervor alone feeds the flame. Within the walls there is a manifest tendency toward freedom from restricted courses of study, or at least toward the provision of manifold optional courses, so that the different requirements of modern society may efficiently be met. The tendency of educated men is away from public life; it is difficult to fill the most important chairs in our universities, not from the lack of candidates, but from the absence of the highest qualifications; and yet, in private life, the country has never had so large a proportion of men of culture and learning.

The earliest professional education in this country was given by clergymen, lawyers, and physicians, each in his own way and his own study, without any reference to an academic examination or degree. To be "licensed" as a preacher, or to be admitted to the bar, or to be recognized as a lawful practitioner in medicine, required some approval from the professions, but not graduation in any professional school. The imperfection of such means of education gradually led to the establishment of schools and seminaries, which were not university faculties, in the proper sense, but technical training-places for lawyers, ministers, and physicians. One of the earliest and best of law schools was begun in Litchfield, Connecticut, by Judges Reeve and Gould in 1784, and maintained for many years,—drawing to its instructions young men from the most distant parts of the land. In 1794, Chancellor Kent delivered his introductory lecture on law in Columbia College, New York. It was not till 1816 that Harvard appointed a professor of law. The Law School at New Haven was organized in 1824, and remained a private institution until 1846, though a professorship of law had been maintained in Yale College after 1801. The University of Virginia began a law department in 1825. There are now thirty-eight schools of law.

It was during the Revolution that the first steps were taken at Cambridge for the introduction of the study of medicine, and a plan for the establishment of three chairs relating to medicine was presented to the Corporation by Dr. Warren in 1782. The Medical School at New Haven was begun in 1813; the College of Physicians and Surgeons in New York dates from 1807. There are now seventy-four schools of medicine, besides eleven dental and fourteen pharmaceutical colleges.

The Catholics maintained a theological school at Baltimore as early as 1791, and another at Emmitsburg in 1808; the theological school at Andover was founded in 1807, at Princeton in 1812, at Cambridge in 1817, at Bangor in 1818, at New Haven in 1822,—though in the colleges last named, theological instruction had for a long time previous been given to graduates. Now there are one hundred and thirteen theological schools reported by the United States Commissioner of Education.

From these figures it is apparent that one of the earliest intellectual movements of the Republic was the organization of professional schools, and that during the last few years these institutions have multiplied with a rapidity unparalleled except by the prolific colleges. Most of these seminaries (the theological furnishing the chief exceptions) are very poorly endowed, and hence depend upon fees, distributed among the professors.

One of the most important modifications in the higher education has been the growth, within the last twenty-five years, of special schools of science. For a long period the United States Military Academy at West Point, founded in 1802, was not only a school of military engineering, but was the chief place in the country for the training of topographical, hydrographical, and civil engineers. In 1826 the Rensselaer Polytechnic School at Troy was incorporated, and under the guidance of Amos Eaton quickly exerted a strong influence in favor of what has been called in later days the New Education. About twenty years later the foundation of the Lawrence Scientific School at Cambridge, and the accession of Agassiz to its staff of teachers, gave the next impulse to scientific education, and soon the Yale, now the Sheffield Scientific School, began its prosperous career. Numerous private gifts have enabled other colleges to institute their scientific departments, and now most of the older institutions, of which Columbia, Princeton, Dartmouth, Rutgers, Easton, and the University of Pennsylvania are conspicuous examples, announce their special courses in chemistry, engineering, and other departments of science. The Stevens Institute at Hoboken, distinct from every other foundation, has made a specialty of mechanics and physics.

In 1862 Congress appropriated a very large portion of the national domain for the encouragement of scientific instruction. The Act is known as the "Agricultural College Act," but its provisions include the sciences relating to agriculture and the mechanic arts, not excluding literary and classical studies. Its intent was to give an impulse all over the land to those studies which have the most obvious relation to the development of the national resources, and which will fit young men for modern scientific professions. Its effect has

been remarkable. Notwithstanding occasional infelicities in the plans of operation adopted by some of the States, the general influence of this endowment has been excellent. In the older Eastern States the national grant was sometimes given to the support and development of institutions already begun, as at Providence, New Haven, Burlington, Hanover, and New Brunswick. In Massachusetts alone it was divided, a part going to the Institute of Technology in Boston, and a part to the Agricultural College at Amherst. In New York this gift gave strength and vitality to the munificence of Ezra Cornell, and enabled the university which bears his name to spring at once into a position of conspicuous influence. In most of the Western States the national bounty was directed to the State universities, though there were exceptions, as in Michigan, where it went to the Agricultural College, and in Iowa. The Southern States, in consequence of the war, were slow to receive the benefits of the Act; but throughout the entire North, institutions aided by this grant are now in full progress, and usually with results which are better than even the friends of the enactment anticipated.

Hostility toward scientific pursuits or toward scientific instruction has never in this country been manifested to any noteworthy extent by the religious part of the community or by theological teachers. In discussions relating to the sphere of science and religion, the teachers of religion have almost always been earnest in their approval of scientific research; so, again, there has been very little controversy between the advocates of scientific and classical culture, each party having been disposed to concede the importance of maintaining institutions in which literature and science may alike be efficiently promoted. There can be no doubt that the influence of Harvard, Yale, and the other older colleges has in this particular been powerful throughout the land.

One of the most praiseworthy and one of the most peculiar features of the educational progress of the country is the amount of benefactions bestowed upon institutions of learning by men of wealth. The task of summing up these gifts has never, so far as we are aware, been adequately performed. Within the last few years the United States Commissioner of

Education has presented the figures which he has been able annually to collect. He reports that in 1871 eight millions and a half of dollars were given by individuals for educational establishments,—but this sum includes the bequest of Horace Hawes (estimated at two million dollars), from which nothing was realized. In 1872 he reports similar benefactions amounting to nearly ten millions; in 1873, to over eleven millions; and in 1874, to over six millions; that is to say, thirty-three millions in the four years prior to 1875. There is hardly any sign of the times more encouraging than the readiness displayed by those who have been prosperous to bestow, many of them in their active lifetime, large gifts upon institutions of learning and education. The care with which such trusts have been administered by the oldest institutions, and their freedom from public interference, during their entire history, are also worthy of remark.

The liberal provisions which have been made for the education of teachers should be considered if our space would permit; and the special higher institutions for young women, like Vassar College, Wellesley College, the Smith College, and multitudes of earlier enterprises, would merit ample discussion.

Special attention should also be directed to the instruction of the unfortunate, the deaf and dumb, the blind, the orphan, the neglected, and the idiotic. The story of deaf-mute instruction, from its commencement in this country at Hartford in 1817 to the foundation of the Clark School at Northampton, is an excellent illustration of the spirit with which an important class of educational institutions has been encouraged and maintained. The influence of one man, Rev. Thomas H. Gallaudet, has been strongly impressed upon all subsequent laborers in his chosen field. The organization of the Hartford institution was placed in his hands, and he was sent to Europe for the purpose of acquiring the art of teaching deaf-mutes. He labored with great earnestness and success to secure State and national support for the cause of deaf-mute instruction, besides giving attention to the training of his pupils, and also to the preparation of teachers who might engage in the work elsewhere than at Hartford. Upwards of forty-five institutions

for the education of deaf-mutes now exist in the United States, with more than five thousand pupils annually in attendance.

In the institution at Washington, sustained by the Federal government, a department for advanced study was organized in 1864 under the name of the National Deaf-Mute College, in which a full academic course of instruction is given. One hundred and thirty-seven youth, representing twenty-eight States and Territories, have come under instruction in this College. Twenty-seven of these have received the degree of Bachelor of Arts, two that of Bachelor of Science, and three that of Master of Arts. In no country, other than our own, has a college for deaf-mutes been established.

The instruction of the blind has also its romantic and instructive record, since the Perkins Institute was founded at Boston in 1829. The education of one of the earliest scholars there, Laura Bridgman, under the skilful hand of Dr. S. G. Howe, has probably attracted more attention than the education of any living person. The success which attended her intellectual development has encouraged multitudes of teachers and has favored the foundation of twenty-seven institutions of the blind now maintained in different parts of the Union.

Public libraries deserve to be mentioned among the agencies for the promotion of education, and the growth of such institutions has of late years been rapid, though not so rapid as in European countries. It is estimated by the United States Commissioner of Education, that, in 1800, the colleges, collectively, owned but fifty thousand volumes; and now Harvard alone has two hundred and eleven thousand volumes. He also reports the number of volumes in public libraries of all classes in Boston, and at Harvard, to be eight hundred and eighty thousand. In 1817 it was estimated by a writer in this Review that there were sixty thousand volumes in the same limits. The National Library at Washington was founded at the beginning of this century, and now contains about two hundred and eighty thousand volumes. Every State and Territory has now at least one library practically free to all comers. New York, in 1835, passed a law providing for the support of district school libraries by taxation, and a similar provision has been made in ten other States. By this agency many excellent

books have been brought before young persons who would otherwise have been without them. Towns are now authorized by law in Massachusetts, Connecticut, Illinois, and Wisconsin to lay taxes for the formation of libraries.

In conclusion, the student of American education, during the first century of the Republic, may well be gratified by the wide-spread diffusion of intelligence through the vast territory of the United States, and at the readiness with which the people of the North and West have taxed themselves for the support of common schools. He may rejoice in the testimony of observing foreigners, that the people of this land, if not the most highly educated, are the most generally educated in the world. He may discover in English popular educational movements on the one hand, and in Japanese on the other, that American methods and results have been carefully considered, commended, and copied in distant lands. He may trace the influence of the common-school system upon plans for the advancement of the States of South America. He may observe that the arrangements for popular education are improving, year by year, by reason of better training-schools for teachers, better supervision, more liberal pecuniary support. He may review with gratitude the efforts of Horace Mann in Massachusetts, and of hosts of men still living in every State of the Union, who, by public addresses, educational conventions, newspaper articles, teachers' institutes, and legislative discussions, have awakened the popular zeal for education when it was dormant, and have controlled it when it was awakened. He may see with satisfaction the growth of a few strong colleges, the commencement of numerous public libraries, the foundation of schools and galleries of the fine arts, and of museums of natural history. He may enumerate munificent benefactions for education which have never been surpassed in the history of civilization. From all this he may take courage.

But he can hardly fail to be dissatisfied by a comparison of our systems of higher instruction with those of Europe; he must acknowledge that, in intermediate instruction, we are far behind what we know to be requisite; and that in primary schools we lose, from one cause and another, much time and

force, — the results not being equal to the outlays involved. He can hardly fail to look with grave apprehension at the political influence upon the nation proceeding from the illiteracy of so many voters as the last census has revealed; and he can hardly fail to discover difficulties ahead from the religious question, unless it is early settled upon the principle of justice to all.

D. C. GILMAN.

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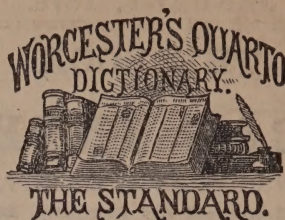
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The Ordinance, in the breadth of its conceptions, its details, and its results, has been perhaps the most notable instance of legislation that was ever enacted by the representatives of the American people. It fixed forever the character of the immigration, and of the social, political, and educational institutions of the people who were to inhabit this imperial territory, — then a wilderness, but now covered by five great States, and teeming with more than ten million persons, or one fourth of the entire population of the United States. It forever prohibited slavery and involuntary servitude, — that

pestilent element of discord and tyranny in our American system, which then existed in all the States except Massachusetts, where it had come to an end, by a decision of its Supreme Court, only four years before. It declared that "religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall always be encouraged." It prohibited the feudal law of primogeniture, and provided that the property of a parent dying intestate should be divided equally among his children or next of kin; that no person demeaning himself in a peaceable and orderly manner shall ever be molested on account of his mode of worship or religious sentiments; that the inhabitants shall always be entitled to the benefits of the writ of *habeas corpus*, of trial by jury, of a proportional representation in the legislature, and of judicial proceedings according to the course of the common law; that all persons shall be bailable, unless for capital offences, when the proof shall be evident, or the presumption great; that all fines shall be moderate, and no cruel and unusual punishment shall be inflicted; that no man shall be deprived of his liberty or property but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary to take any man's property, or to demand his particular services, full compensation shall be made for the same; and in the just preservation of rights and property, it is understood and declared that no law ought ever to be made or have force in said territory that shall in any manner whatever interfere with or affect private contracts or engagements *bona fide* and without fraud previously made.

This was the first embodiment in written constitutional law of a provision maintaining the obligation of contracts. Six weeks later it was, on motion of Mr. King of Massachusetts, incorporated in the draft of the Constitution of the United States.

The Ordinance further provided, that "the navigable waters leading into the Mississippi and St. Lawrence, and the carrying-places between the same, shall be common highways and forever free, as well to the inhabitants of the said territory as to the citizens of the United States."

Such are some of the broad and enlightened provisions which have made the Ordinance of 1787 so beneficent and memorable. They entered not only into the organic laws of the territory, but were made perpetual and irrepealable. When new States were organized on this territory, the people were not left with the discretion of accepting or discarding the provisions of the Ordinance in their constitutions. Its vital principles, some of which have been enumerated, were embodied in six "articles of compact between the original States and the people and States of the said territory, and forever to remain unalterable unless by common consent." It was well understood that common consent to any material change could never be obtained. No other instance exists in American legislation of laws enacted under the form of "articles of compact," except in the ordinance relating to this same territory drawn by Mr. Jefferson in 1784, which will come under our notice in a later part of this discussion. If the slavery prohibition had not been an "article of compact," Indiana and Illinois, and possibly Ohio, would have been admitted into the Union as Slave States. As early as 1802 Gen. William Henry Harrison, then Governor of the Indiana Territory, and later President of the United States, called a convention of delegates to consider the means by which slavery could be introduced into the territory; and he himself presided over its deliberations. The convention voted to give its consent to the suspension of the sixth article of compact, and to memorialize Congress for its consent to the same. The memorial laid before Congress stated that the suspension of the sixth article would be highly "advantageous to the territory," and "would meet with the approbation of at least nine tenths of the good citizens of the same." The subject was referred to a committee, of which Mr. John Randolph of Virginia was chairman, who reported adversely as follows: "That the rapidly increasing population of the State of Ohio sufficiently evinces, in the opinion of your committee, that the labor of slaves is not necessary to promote the growth and settlement of colonies in that region. That this labor, demonstrably the dearest of any, can only be employed to advantage in the cultivation of products more valuable than any known in that quarter of the

United States; that the committee deem it highly dangerous and inexpedient to impair a provision wisely calculated to promote the happiness and prosperity of the Northwestern country, and to give strength and security to that extensive frontier. In the salutary operation of this sagacious and benevolent restraint, it is believed that the inhabitants of the territory will, at no very distant day, find ample remuneration for a temporary privation of labor and of emigration.”*

Ohio was admitted to the Union the same year, and in the formation of her Constitution the advocates of slavery made a bold and decided stand for its introduction, but were defeated. Several memorials were sent to Congress at a later date, from Indiana and Illinois, asking for the repeal of the antislavery prohibition, and several committees in Congress reported in favor of the repeal; but Congress firmly maintained the integrity of the compact of 1787.

The only persons dwelling in the territory at that time were about three thousand Louisiana and Canadian French settlers on its western and northern borders, a few families in the southern border, who claimed to be citizens of Virginia, and roving tribes of Indians. Although the Ordinance protected the personal and land rights of the French settlers, among whom a few slaves were held, they took no part in the political affairs of the territory, and gradually moved across the Mississippi and into Canada. The Ordinance had, therefore, no old rubbish to clear away, and no deep-seated customs and prejudices to contend against. It stamped itself upon the soil while it was yet a wilderness, and its impress can be seen to-day in the laws, the character, the social habits, and thrift of these great Northwestern States. Compare these States with Kentucky on the south and Missouri on the west, over which this Ordinance did not extend. Across the Ohio and Mississippi Rivers can be found an order of civilization and social customs that might suggest to a Northern traveller that he was in a foreign country. This disparity in industrial habits, general education, and business enterprise was even more marked before the late war than it is now.

* Am. State Papers, Pub. Lands, I. 160.

Extend this comparison to the events which occurred from 1861 to 1865. Every square mile of territory that was covered by the Ordinance of 1787 was patriotic, and gave its men and its means for the support of the Union. South and southwest of that boundary-line were treachery and rebellion under the plausible semblance of neutrality. Kentucky and Missouri probably furnished more men who fought *against* the United States flag than fought *under* it. The Northwestern States put more than a million soldiers into the Union armies; and they were the men who fought at Forts Henry and Donelson, Pittsburg Landing, Stone River, Jackson, and Vicksburg, and achieved the only Union victories gained during the first two years of the war. If, instead of the principles of the Ordinance of 1787, the institutions of Kentucky and Missouri had been allowed to gain a foothold in these States, can any one doubt what would have been the result of the war and the fate of this Union?

If Mr. Webster were living to-day, would he not see new reasons for that splendid encomium which in 1830, in his speech in answer to Hayne, he pronounced on the Ordinance of 1787? "We are accustomed," he said, "to praise the law-givers of antiquity; we help to perpetuate the fame of Solon and Lycurgus; but I doubt whether one single law of any law-giver, ancient or modern, has produced effects of more distinct, marked, and lasting character than the Ordinance of 1787. We see its consequences at this moment, and we shall never cease to see them, perhaps, while the Ohio shall flow."

Judge Timothy Walker of Ohio, in an address delivered at Cincinnati in 1837, said: "Upon the surpassing excellence of this Ordinance no language of panegyric would be extravagant. It approaches as nearly to absolute perfection as anything to be found in the legislation of mankind; for after the experience of fifty years, it would perhaps be impossible to alter without marring it. In short, it is one of those matchless specimens of sagacious forecast which even the reckless spirit of innovation would not venture to assail. The emigrant knew beforehand that this was a land of the highest political as well as national promise, and under the auspices of another Moses, he journeyed with confidence towards his new Canaan."

Mr. Chase, late Chief Justice of the United States, in the introduction to his "Statutes of Ohio," said: "Never, probably, in the history of the world, did a measure of legislation so accurately fulfil, and yet so mightily exceed, the anticipations of the legislators. The Ordinance has well been described as having been a pillar of cloud by day and of fire by night in the settlement and government of the Northwestern States."

It may seem strange that, after the lapse of nearly a century, the origin and history of so important a document should still be matters of doubt, and hence of discussion. The statement is ventured with some confidence that in the whole range of topics in our national history there is none which has been more obscure, or the subject of more conflicting and erroneous statements than the one just named. No one of the general histories of the United States or of the special histories of the Western States gives any information on the subject. Mr. G. T. Curtis in his elaborate "History of the Constitution of the United States," knowing it to be the source of some of the provisions of the Constitution, has omitted to give any historical account of the Ordinance.*

Mr. Webster, in the speech which has been quoted, ascribed the authorship of the Ordinance solely to Nathan Dane of Massachusetts, and this has been the commonly received opinion on the subject since that time. Mr. Benton of Missouri, and Mr. Hayne, promptly challenged the accuracy of the statement upon the spot. "Before I proceed," said Mr. Benton, "to the main object of this reply, I must be permitted to clear away some ornamental work, and to remove some rubbish which the Senator from Massachusetts [Mr. Webster] has

*In his second volume, p. 344, is a note referring the reader, for an account of the Ordinance, to the appendix; but nothing on the subject appears in the appendix. His publishers subsequently issued a printed slip, containing a note from Mr. Curtis, dated March 20, 1858, which will be found inserted in some copies, stating the reason why this matter was omitted. After the foot-note on p. 344 had been printed, the author's attention was called to a letter written by Mr. Dane to Rufus King, which he regarded as settling the question of authorship, and hence he had cancelled the matter he had prepared. A brief extract from this letter is given, but without an intimation as to where the entire letter can be found. Mr. Dane's letter was printed by Charles King, the son of Rufus King, in the "New York Daily Tribune" of February 28, 1855, page 6. It is an important letter, and will be quoted and considered in the progress of this discussion.

placed in the way, either to decorate his own march or to embarrass mine. He has brought before us a certain Nathan Dane, of Beverly, Massachusetts, and loaded him with such an exuberance of blushing honors as no modern name has been known to merit or to claim. So much glory was caused by a single act, and that act the supposed authorship of the Ordinance of 1787, and especially the clause in it which prohibits slavery and involuntary servitude. So much encomium and such grateful consequences it seems a pity to spoil, but spoil it must be; for Mr. Dane was no more the author of that Ordinance, sir, than you or I, who about that time were mewling and puking in our nurses' arms. That Ordinance, and especially the non-slavery clause, was not the work of Nathan Dane of Massachusetts, but of Thomas Jefferson of Virginia."

Later in the same debate Mr. Benton said: "I have already given the proof of the fact that the South is entitled to the honor of originating the clause against slavery in the Northwestern Territory. The state of the votes also upon the adoption shows that she is entitled to the honor of passing it."

Mr. Hayne commented on the subject in a similar strain. Mr. Charles King of New York, President of Columbia College, in 1855, published a paper on the Northwestern Territory, in which he claimed for his father, Rufus King, the credit of being the author of the antislavery clause in the Ordinance. Mr. Rufus King did, two years before the Ordinance was passed, propose such a clause as a supplementary provision to another ordinance; but, as we shall presently see, nothing ever came of it. He moved its committal, and never called it up for consideration. Mr. King was not a member of the Congress which passed the Ordinance of 1787, but was a member of the Convention for the formation of the Constitution in session at the same time at Philadelphia.

Hon. Edward Coles, Governor of Illinois from 1822 to 1826, read a paper before the Pennsylvania Historical Society in June, 1856, and printed by the Society, entitled "History of the Ordinance of 1787." His object was chiefly to controvert Mr. Webster's statement as to its authorship, and to claim the honor for Mr. Jefferson.

The obscurity which has hung over the subject has arisen chiefly from the fact that in the old Continental Congress the proceedings were held in secret session, and no report of its debates was preserved. Its secret journal was printed some years later; but it was kept in so meagre and careless a manner that it is impossible from it to follow the business of the sessions. It was, moreover, regarded as a breach of confidence to speak of outside, or to write about, the business of Congress. Mr. Webster, relying on the secret journal, fell into many errors. If he had information from other sources, that, in many instances, was also erroneous. It was impossible to find in print at that time the facts on which an accurate statement of the matter could be made. Mr. Dane was then living in his seventy-eighth year, and died five years later. His pastor and biographer, the Rev. Christopher T. Thayer, has given in the sketch of his life, in Stone's History of Beverly, no further information on the subject than is contained in Mr. Webster's statement. Mr. Thayer, two years ago, informed the writer that he never heard Mr. Dane speak of the Ordinance, and was not aware that he had written upon it. Since that time three letters of Mr. Dane, treating the subject of the Ordinance, have come to the writer's notice: 1. The letter to Rufus King, dated July 16, 1787, already noticed. 2. A letter to Daniel Webster, dated March 26, 1830 (after Mr. Webster had made his second speech in reply to Hayne), which is printed in the Massachusetts Historical Society's Proceedings, 1867-69, p. 475. 3. A letter to J. H. Farnham, Secretary of the Indiana Historical Society, dated May 12, 1831, and printed in the "New York Tribune" of June 18, 1875. In all these letters Mr. Dane claims to be the author of the Ordinance, the same claim he makes in his "Abridgment and Digest of American Law," Vol. VII. p. 389. That he was the member of the committee who wrote the draft of the Ordinance which was submitted to and passed by Congress, there can be no question. A clerk of the committee, under instructions, might have performed this duty. Whether he was the author of the instrument, in the higher sense of furnishing its fundamental ideas, the occasion, the personal influence, the political motives, and the strategy which were needed to carry the measure through, and what services were

rendered by other persons, are legitimate subjects of historical investigation, to which we will direct our inquiries.

Several ordinances for the government of the Northwestern Territory were before Congress from 1784 to 1787, and the first authentic information concerning them appeared in a paper prepared by Mr. Peter Force of Washington, and printed in the "National Intelligencer" of August 26, 1847. Mr. Force, when searching for materials for his "American Archives," found a parcel of manuscripts containing the original reports relating to these several ordinances, with the changes and amendments attached, their precise condition at different dates, and memoranda of the disposition made of them. His paper embodied a statement of these facts. Governor Coles, writing nine years later, was not even aware of the existence of Mr. Force's paper, and hence his statements and his conclusions were strangely inaccurate. Mr. Force's statement, valuable as it is, falls far short of being a complete account of the Ordinance. It, however, developed the fact, for the first time, that, instead of being under consideration for three years and six months, as Governor Coles and some other writers have asserted, it was, in the brief space of four successive days, drafted *de novo*, reported to Congress, took its first, second, and third reading, and was enacted by the unanimous vote of all the States present. Mr. Force was amazed at this sudden action, and confesses his inability to explain it. It is the good fortune of the writer to have in his possession original and contemporary manuscripts, and other authentic evidence, which will show how this sudden action was brought about, and who was the person that inspired and controlled this action.

It will be necessary, as a preparation for the new evidence to be presented, that a brief sketch be given of the several plans or ordinances for the government of the Northwestern Territory which were brought forward and considered by Congress prior to the real Ordinance, which was passed July 13, 1787.

On the 1st of March, 1784, a committee consisting of Mr. Jefferson of Virginia, Mr. Chase of Maryland, and Mr. Howell of Rhode Island, reported an ordinance for the temporary government of the territory, which should continue in force only until any of the ten States, whose boundaries were described,

should have a population of twenty thousand free inhabitants. It further provided that any of the States may be admitted into the Union when their number of free inhabitants is as many as any one of the least numerous of the thirteen original States; and that the several States should bear the following names: Sylvania, Michigania, Cheronesus, Assenisipia, Metropotamia, Illinoia, Saratoga, Washington, Polypotamia, and Pelesipia. It proposed, also, five "articles of compact," which were quite unlike the six articles in the Ordinance of 1787. The fifth article was as follows: "That after the year 1800 of the Christian era, there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted to have been personally guilty."

The report was recommitted, and on the 22d of March a second report was made, substantially the same as the first, except that the fanciful names of the new States were stricken out. On the 19th of April, on motion of Mr. Spaight of North Carolina, seconded by Mr. Read of South Carolina, a vote was taken whether the fifth article of compact should stand. The vote was six States in the affirmative and three in the negative. In the old Congress the method of voting was quite different from that of the present Congress. All business was voted upon by States, and the affirmative vote of seven States, a majority of the original thirteen, was necessary to carry any measure. No State could vote unless it had at least two delegates present. In that case, both must vote in the affirmative, or the vote of the State was lost. If three delegates were present, two affirmative votes could carry the vote of the State. It seldom happened that as many as ten of the original thirteen States were represented at one time. Six States only voting for Mr. Jefferson's antislavery clause, it was lost. The ordinance, without any slavery restriction, passed April 23, 1784; and was, chiefly from the absence of such a restriction, a dead letter. No settlement of the territory was made under it.

The defeat of Mr. Jefferson's antislavery clause was regarded at the time as a great calamity: but Northern men soon saw that it was a most fortunate circumstance; for if slavery had been allowed to get a foothold in the territory for

sixteen years, it could not have been abolished at the end of that period. We have already seen what was the state of public sentiment in Illinois, Indiana, and Ohio at that time. Timothy Pickering of Massachusetts, writing to Rufus King, March 8, 1785, said: "I should have objected to the period proposed for the exclusion of slavery; for the admission of it for a day or an hour ought to have been forbidden. It is infinitely easier to prevent the evil at first than to eradicate it or check it at any future time. For God's sake, let one more effort be made to prevent so terrible a calamity."

March 10, 1784, seventeen days after the passage of his ordinance as amended, Mr. Jefferson resigned his seat in Congress, and, having been appointed minister to France, soon after left the country, and did not return till December, 1789. And yet Mr. Benton, Governor Coles, and others, with an entire misconception of the facts of the case, award to Mr. Jefferson the honor of being the author of the Ordinance of 1787, an entirely different instrument. Mr. Jefferson is, however, entitled to the credit of bringing forward and using his influence to carry, in opposition to the vote of his own and of every other Southern State, some sort of slavery prohibition; and especially of devising the happy idea of "articles of compact," which was made use of in the later Ordinance. Here Mr. Jefferson's claim of authorship ends.

March 16, 1785, eight days after the date of Mr. Pickering's letter just quoted, Mr. King of Massachusetts, seconded by Mr. Ellery of Rhode Island, moved that the following resolution be committed:—

"Resolved, That there shall be neither slavery nor involuntary servitude in any of the States described in the resolve of Congress of the 23d of April, 1784, otherwise than in the punishment of crimes whereof the party shall have been personally guilty; and that this regulation shall be an article of compact, and remain a fundamental principle of the Constitutions between the thirteen original States, and each of the States described in the said resolve of the 23d of April, 1784."

Eight States voted to commit, and three States (Virginia, North Carolina, and South Carolina) voted in the negative. The resolution was therefore referred to the committee of the

whole, there being then no committee on the Territories. Delaware and Georgia were not then represented by delegates in Congress. Mr. Webster was mistaken as to the disposition of this resolution. He supposed the vote was upon its passage, whereas it was only on its commitment. He says: "The votes of nine States were not yet obtained, and thus the provision was again rejected by Southern votes."* The resolution went to the committee, and was never called up for action by Mr. King, Mr. Dane, or any other member; and so far as appears, was never again alluded to. It certainly was not incorporated into any of the several plans subsequently submitted, previous to July 11, 1787; and one of these may have been drawn by Mr. Dane, he being a member of the committee who reported it.

On the 24th of March, 1786, a report was made by the grand committee of the House to whom had been referred a motion of Mr. Monroe concerning the Western Territory. On the 10th of May of the same year, a committee consisting of Mr. Monroe of Virginia, Mr. Johnson of Connecticut, Mr. King of Massachusetts, Mr. Kean of South Carolina, and Mr. Pinckney of South Carolina, reported an ordinance for the Northwest Territory, which was recommitted, and considered from time to time. This committee was appointed on motion of Mr. Dane; but he was not a member of it. On September 19 of the same year, another committee, consisting of Mr. Johnson of Connecticut, Mr. Pinckney of South Carolina, Mr. Smith of New York, Mr. Dane of Massachusetts, and Mr. Henry of Maryland, appointed to propose a plan of temporary government of the territory, made a report which was discussed from time to time for several months. April 26, 1787, the same committee reported another ordinance, which took its second reading and was amended May 9. Its third reading was assigned for the following day. May 10, the third reading

* Works, Vol. III. p. 283. Mr. Dane, also, misconceived the import of this vote. He says: "So the article against slavery was supported, March 16, 1785, by a large majority, as an article of compact, and to remain a fundamental principle in the constitutions between the thirteen original States and each of the States in said territory." (General Abridgment and Digest, Vol. VII. p. 443.) If the vote had been on its enactment it would have passed, as the vote of seven States was sufficient for that purpose.

was called for "by Massachusetts," as the record states, and probably by Mr. Dane, who was a member of the committee having it in charge. Mr. King and Mr. Gorham, both of Massachusetts, were also present. No vote was taken, and final action was postponed. Among the papers found by Mr. Force was the original draft of this ordinance as it stood on the 10th of May, and as it came down without amendment to the 9th of July, only five days before the real Ordinance of 1787 was passed. Mr. Force has printed its full text. That Mr. Dane or any other Northern man should have served on a committee which drafted such an ordinance, and called for its third reading on the 10th of May, 1787, is evidence that there were very crude ideas in Congress at that time as to what an ordinance defining the fundamental laws of the Northwestern Territory should be. It had no resemblance to the Ordinance which passed on the 13th of July. It had no restriction of slavery, none of those sublime principles as to personal and civil rights, education, religion, and morality, and the obligation of contracts, which appeared in the later Ordinance. It had no articles of compact; in short, it had none of those provisions which have made the Ordinance of 1787 so beneficial and renowned. Mr. Dane, in his letter to Mr. Webster, calls this the Report of 1786, for the reason probably that the committee was appointed in 1786. He says: "In its formation Mr. Pinckney, myself, and, I think, Smith, took a part. So little was done with the Report of 1786 that only a few lines were entered in the journals. I think the files, if to be found, will show that report was reformed, and temporary parts added to it by the committee of 1787." * Mr. Dane, in the lapse of forty-three years, had evidently forgotten the import of that report, for it was not printed in his lifetime, and he was in doubt whether it could be found. It has probably never been printed except in Mr. Force's paper, which was copied from the "National Intelligencer" into the "Western Law Journal," published at Cincinnati, for September, 1848. This report becomes important evidence in developing the history of the Ordinance of 1787, and is here reprinted:—

* Mass. Hist. Soc. Proceedings, 1867-69, p. 447.

AN ORDINANCE FOR THE GOVERNMENT OF THE WESTERN TERRITORY.

It is hereby ordained by the United States in Congress assembled, that there shall be appointed, from time to time, a Governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress.

There shall be appointed by Congress, from time to time, a Secretary, whose commission shall continue in force for four years, unless sooner revoked by Congress. It shall be his duty to keep and preserve the acts and laws passed by the General Assembly, and public records of the District, and of the proceedings of the Governor in his executive department, and transmit authentic copies of such acts and proceedings every six months to the Secretary of Congress.

There shall also be appointed a Court, to consist of three judges, any two of whom shall form a Court, who shall have a common-law jurisdiction, whose commissions shall continue in force during good behavior. And to secure the rights of personal liberty and property to the inhabitants and others, purchasers in the said Districts, it is hereby ordained that the inhabitants of said Districts shall always be entitled to the benefits of the act of *habeas corpus* and of the trial by jury.

The Governor and judges, or a majority of them, shall adopt and publish in the Districts such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the District, and report them to Congress from time to time, which shall prevail in said District until the organization of the General Assembly, unless disapproved of by Congress; but afterwards the General Assembly shall have authority to alter them as they think fit: provided, however, that said Assembly shall have no power to create perpetuities.

The Governor for the time being shall be commander-in-chief of the militia, and appoint and commission all officers in the same below the rank of general officers: all officers of that rank shall be appointed and commissioned by Congress.

Previous to the organization of the General Assembly, the Governor shall appoint such magistrates and other civil officers in each county or township as he shall find necessary for the preservation of peace and good order in the same. After the General Assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said Assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the Governor.

The Governor shall, as soon as may be, proceed to lay out the District into counties and townships, subject, however, to such alterations as may thereafter be made by the Legislature, so soon as there shall be five thousand free male inhabitants, of full age, within the said District. Upon giving due proof thereof to the Governor, they shall receive authority, with time and place, to elect representatives from their counties and townships as aforesaid, to represent them in General Assembly: provided, that for every five hundred free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants shall the right of representation increase, until the number of representatives amount to twenty-five; after which the number and proportion of representatives shall be regulated by the Legislature: provided, that no person shall be eligible or qualified to act as a representative, unless he be a citizen of one of the United States, or have resided within such District three years, and shall likewise hold, in his own right, in fee simple, two hundred acres of land within the same: provided also, that a freehold or life estate in fifty acres of land in the said District, if a citizen of any of the United States, and two years' residence if a foreigner, in addition, shall be necessary to qualify a man as elector for the said representative.

The representatives thus elected shall serve for the term of two years, and in case of the death of a representative, or removal from office, the Governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the time.

The General Assembly shall consist of the Governor, a Legislative Council, to consist of five members, to be appointed by the United States in Congress assembled, to continue in office during pleasure, any three of whom to be a quorum; and a House of Representatives, who shall have a legislative authority complete in all cases for the good government of the said District: provided, that no act of the said General Assembly shall be construed to affect any lands the property of the United States; and provided, further, that the lands of the non-resident proprietors shall in no instance be taxed higher than the lands of residents.

All bills shall originate indifferently either in the Council or House of Representatives, and, having been passed by a majority in both Houses, shall be referred to the Governor for his assent, after obtaining which they shall be complete and valid; but no bill or legislative act whatever shall be valid, or of any force without his assent. The Governor shall have power to convene, prorogue, and dissolve the General Assembly when in his opinion it shall be expedient.

The said inhabitants or settlers shall be subject to pay a part of the Federal debts, contracted or to be contracted, and to bear a proportional part of the burdens of the Government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States.

The Governor, Judges, Legislative Council, Secretary, and such other officers as Congress shall at any time think proper to appoint in such District, shall take an oath or affirmation of fidelity; the Governor before the President of Congress, and all other officers before the Governor, prescribed on the 17th day of January, 1785, to the Secretary of War, *mutatis mutandis*.

Whensoever any of the said States shall have of free inhabitants as many as are equal in number to the one-thirteenth part of the citizens of the original States, to be computed from the last enumeration, such State shall be admitted by its delegates into the Congress of the United States, on an equal footing with the said original States: provided the consent of so many States in Congress is first obtained as may at that time be competent to such admission.

Resolved, That the resolutions of the 23d of April, 1784, be and the same are hereby annulled and repealed. (*Western Law Jour.* V. 534.)

The impression which this draft made upon Mr. Force's mind he expressed as follows: "Such was the Ordinance for the government of the Western Territory when it was ordered to a third reading on the 10th of May, 1787. It had then made no further progress in the development of those great principles for which it has been distinguished as one of the greatest monuments of civil jurisprudence. It made no provisions for the equal distribution of estates. It said nothing of extending the fundamental principles of civil and religious liberty, — nothing of the rights of conscience, knowledge, or education. It did not contain the articles of compact which were to remain unaltered forever unless by common consent."

We now come to the time when these great principles were for the first time brought forward. On the 9th of July a new committee was appointed, consisting of Mr. Carrington of Virginia, Mr. Dane of Massachusetts, Richard Henry Lee of Virginia, Mr. Kean of South Carolina, and Mr. Smith of New York. The new members, Carrington, Lee, and Kean, were a majority, and all Southerners. Two days later this committee

reported the great bill of rights known as the Ordinance of 1787.

Mr. Force, who accepted Mr. Webster's statement that Mr. Dane was the author of the Ordinance, was puzzled by the fact that Mr. Carrington, a new member from Virginia, was placed at the head of the committee, to the exclusion of Mr. Dane and Mr. Smith, both of whom had served on a previous committee, and he asked the reason why. Several other questions, quite as difficult of solution, must have suggested themselves to his mind. Why were three Southern members, all new men, and constituting a majority of the committee, put in charge of drafting an antislavery ordinance for a Northern territory, which had been defeated by the entire vote of the South three years before? If antislavery principles were so popular with Southern members, why did not Mr. Dane insert an antislavery clause in the ordinance which was to have taken its third reading on the 10th of May? As Mr. Johnson of Connecticut was the chairman of that committee, and three out of five of its members were Northern men, why did not the committee make it an antislavery ordinance? Whence did so much light dawn so suddenly upon the mind of Mr. Dane, when associated with a majority of Southern members on another committee? What is the explanation of the entire unanimity of feeling and action on the slavery question, then exhibited for the first and last time, in the whole history of our national legislation?

If Mr. Force had analyzed the vote by which the Ordinance passed four days after the committee was appointed, he would have been still further puzzled. New Hampshire, Rhode Island, Connecticut, Pennsylvania, and Maryland were not then represented by delegates in Congress,—all of them Northern and Middle States, except the last. Of the eight States represented, and all voting for the Ordinance, only three—Massachusetts, New York, and New Jersey—were Northern and Middle States. The Ordinance was really carried by the votes of Delaware, Virginia, North Carolina, South Carolina, and Georgia. The only individual who voted nay was Mr. Yates from New York. Mr. Dane subsequently explained this vote by saying, in his letter to Rufus King: "Yates ap-

peared in this case, as in most others, not to understand the subject at all." As there were three delegates present from New York, the vote of Mr. Yates was neutralized.

Any satisfactory history of the Ordinance of 1787 must explain the enigmas we have suggested, and it must be a full and complete explanation. When the astronomer discovers irregular movements in a planet which cannot be explained by known causes, he infers that they arise from some outside and hitherto unknown body, and he sets himself to find it. The nature of the perturbations gives him an indication of the volume and locality of the occult influence. It is evident, from the investigation we have followed, that some sudden and potent influence was brought to bear upon Congress in the early days of July, 1787, which changed the whole current of action respecting the organic law for the government of the Northwestern Territory, which inspired new ideas, and suddenly crystallized in the matchless specimen of legislation which we are considering. What was that influence? To this inquiry we will now direct our attention.

On the afternoon of July 5, a dusty traveller, in the garb of a New England clergyman, arrived in New York City, and drove up, in his one-horse sulky, to the "Plow and the Harrow," a tavern in the Bowery; and sent his horse for entertainment to the Bowery barns. Twelve days before he had left his home in the town of Ipswich, in the eastern part of Massachusetts, and had made the journey in his private carriage, there being no public conveyances at that time. His business in New York was to buy of Congress, there in session, a million and a half acres of land in the Northwest Territory for a settlement under the auspices of the "Ohio Company of Associates." His name was DR. MANASSEH CUTLER. He remained in New York and the vicinity about three weeks, bought his million and a half acres for the Ohio Company, and about four million acres for other parties. In April of the following year, the Ohio Company made the first English settlement of the Northwest Territory at Marietta, Ohio, at the mouth of the Muskingum, on the land which Dr. Cutler had bought on this occasion. General Washington, writing from Mount Vernon, two months later, said: "No colony in Amer-

ica was ever settled under such favorable auspices as that which has just commenced at the Muskingum. Information, property, and strength will be its characteristics. I know many of the settlers personally, and there never were men better calculated to promote the welfare of such a community. If I were a young man, just preparing to begin the world, or, if advanced in life, and had a family to make a provision for, I know of no country where I should rather fix my habitation than in some part of that region.”* While the good Doctor was in New York transacting this business, the Ordinance of 1787 was drafted and passed. The writer has in his possession the manuscript journal Dr. Cutler kept during this period, and only extracts from it have ever been printed. This journal supplements the material which Mr. Force discovered, and shedding light upon those few days in July, enables us to see why, how, and by whom, that sudden action of Congress was inspired.

A word of explanation is needed as to the Ohio Company, and some account of Dr. Cutler, who was its agent. The close of the Revolutionary war was marked by a period of the deepest financial distress. The country was exhausted. The officers and soldiers of the army had been paid off in government certificates bearing interest, which had depreciated to one sixth of their nominal value; business was stagnant, the country was flooded with these certificates, and the government had little available income and no credit on which it could borrow money. A scheme was devised by leading officers of the late army in the eastern part of Massachusetts, to form a company, the capital of which should be these depreciated certificates, for the purchase of land from the government for actual settlement. A meeting of officers for this purpose was held at the Bunch-of-Grapes Tavern in Boston, on the 1st of March, 1786. Such a company was formed, and subscription books were opened. On the 8th of March, 1787, the subscribers to the shares met again at Brackett's Tavern in Boston, and the committee on subscriptions made so favorable a report that Dr. Cutler, one of the directors and a chaplain in the late Revolutionary army, was instructed to proceed to New York and negotiate for the purchase of the land from Congress.

* Sparks's edition of Washington's Writings, Vol. IX. p. 385.

Dr. Cutler, by his learning and personal accomplishments, was peculiarly qualified for such a mission. He was graduated twenty-two years before at Yale College. He had studied and taken regular degrees in the three learned professions of law, divinity, and medicine. As a scientist, however, he was best known. He was second, perhaps, to no living American, except Dr. Franklin, in scientific attainments. He was a member of the American Academy of Arts and Sciences at Boston, the American Philosophical Society at Philadelphia, the Massachusetts Medical Society, and other similar bodies. In the first volume of the "Memoirs of the American Academy," published in 1785, are four papers of his, on Astronomy, Meteorology, and Botany. These are their titles: —

1. Observations of the Transit of Mercury over the Sun, Nov. 12, 1782, at Ipswich.

2. Observations of an Eclipse of the Moon, March 29, 1782, and of an Eclipse of the Sun on the 12th of April following, at Ipswich.

3. Meteorological Observations at Ipswich in 1781, 1782, and 1783.

4. An Account of some Vegetable Productions naturally growing in this part of America, botanically arranged.

His paper on Botany, filling a hundred quarto pages, was the first scientific treatise on and classification of the plants of New England; and the first of the kind in this country. These papers, printed only two years before, gave him, as we see in his journal, a cordial *entrée* into all the literary and scientific circles in New York and Philadelphia. Harvard College had given him an honorary degree of A. M., and Yale College the degree of LL. D. Later Washington appointed him Judge of the Supreme Court of the Northwestern Territory, which honor he declined. Four years he was a member of Congress from the Essex district of Massachusetts, and a noted speech he there made on the subject of the Judiciary indicates the class of subjects he was competent to treat. The writer has conversed with and has letters from several aged persons who knew him intimately, and took pleasure in describing his characteristics. He was a person of stately and elegant form and courtly manners, and at the same time easy, affable, and

communicative. He was much given to relating anecdotes, and making himself agreeable. His manners particularly impressed the Southern members, with whom he chiefly associated. They had never before seen, they said, such qualities as his in a Northern man. In his mental characteristics he much resembled Dr. Franklin, who was personally one of the most agreeable of men. His favorite topics of conversation, when he had sympathetic listeners, were science and natural history. Like Dr. Franklin, he took delight in the society of beautiful and accomplished women. His journal gives the minutest descriptions of the noted ladies he met in his travels, not omitting to describe their costumes, and the mode of dressing their hair.

His association with Southern members was most likely from motives of policy. He needed their votes. There was then a feeling in Congress, as there has been since, — whether justified or not does not now concern us, — that New England did not favor the settlement of the West. The Western interests looked to the South for support rather than to the East. This feeling was manifested in the debate in 1785 concerning the sale and disposition of the Western lands. The bill of 1785, which provided for the admirable system of Western land surveys, was reported by a committee of which a majority were Northern men. The original bill provided that each township a mile square should be sold complete before the next was offered for sale; in other words, that the people should buy clean as they went, or not at all, whatever might be the nature of the surface or character of the soil. New England members were accused of inserting this provision in order to prevent the sale of the lands. Mr. King of Massachusetts was charged, without doubt unjustly, of saying that it was his intention to oppose the formation of new States in the West. It was said that Massachusetts had thirty thousand square miles of territory in the Province of Maine for sale, and it was the policy of her members to turn emigration in that direction. Mr. Madison of Virginia moved to amend this objectionable feature of the bill, and it was done with the support of Southern votes. Virginia, having ceded her claims in the Northwestern Territory to the United States, regarded her-

self as the special patron and supporter of its interests. Other States made a similar cession of their real or supposed claims, but those of Virginia were regarded as the most valid.

It was, therefore, Dr. Cutler's policy in furtherance of his Western project, to hold himself somewhat aloof from his New England associates, and to cultivate the friendship of the Southern members. Northern votes he could get when he needed them. Col. Carrington, Richard Henry Lee, and Mr. Grayson, all of Virginia, were, as appears by his journal, his warmest friends and confidential advisers. Dr. Holton, a distinguished member from Massachusetts, said he could not conceive how Dr. Cutler had so soon and so warmly engaged the friendship of members; for since he had been a member of that body he had never known so much attention paid to any one person.

With all his personal accomplishments and the spiritual graces of a New England clergyman, he had a large share of worldly wisdom. His journal furnishes evidence that the arts of the lobbyist were not invented in our day. In his business with Congress he regarded success as a duty. He found it difficult to enlist the interest of General St. Clair, the President of Congress, in his scheme. He found, also, that General St. Clair wanted to be Governor of the Northwestern Territory; and Dr. Cutler, representing the interests of the Ohio Company, intended that General Parsons of Connecticut should have that office. But he must have General St. Clair's influence, and found it necessary to pay the price. From the moment he communicated this decision, General St. Clair was warmly engaged in his interests, and the General *was* the first Governor of the Territory. In a letter written some years later to Mr. W. B. Giles of Virginia, General St. Clair said: "The office of Governor was in a great measure forced upon me." *

Mr. Dane was the representative of the Essex District in Massachusetts, where Dr. Cutler resided; he was born in Ipswich, where the Doctor was the settled minister. The latter, however, did not rely on Mr. Dane for making the acquaintance of the members of Congress. He brought letters of introduction

* Dillon's History of Indiana, p. 213.

from President Willard of Harvard College, Governor Bowdoin, and other eminent citizens of Massachusetts. He gives an inventory of these letters, forty-two in number, which includes the names of Carrington, Lee, and Smith, three of the five members who reported the Ordinance of 1787. On the morning of the 6th of July — he had arrived in New York the evening before — the first person we find him in company with was Colonel Carrington, who was introducing him to the members on the floor of Congress, just before the session of the day began. He then delivered his petition for the purchase of land in the Northwest Territory. He dined that day with Mr. Dane and Mr. Milliken, Comptroller of the Treasury, and spent the evening with several members of Congress. The next day he made the acquaintance of Mr. Hutchins, Geographer of the United States, and consulted with him about the location of the purchase; dined with General Knox, Secretary of War; and took tea with Rev. Dr. Rogers, in company with Dr. Ewing, Dr. Witherspoon, and several other noted clergymen. Dr. Rogers was very urgent that Dr. Cutler should preach for him the next day; but he declined on account of fatigue. On Monday he dined with Sir John Temple, the British Consul-General, with a large company of gentlemen connected with the government. Mr. Dane and Dr. Holton were also invited, as Massachusetts representatives, out of respect to Dr. Cutler, as Sir John graciously informed him. This series of attentions was kept up during his stay in New York, and serves to illustrate the respect which was felt for his attainments and character. These social occasions, instead of interfering with his business, gave him the best opportunities for explaining his project and urging his suit. The sale of the public lands, he claimed, would absorb the floating debt of the country, which was fatal to the public credit. The sale of land to actual settlers was the most feasible, and indeed the only path out of the financial and business prostration under which the country was then laboring. The purchase he proposed would result in an immediate and immense emigration to the West of the most enterprising and patriotic men of the Northern States, and especially from New England, who would, without expense to the government, form a barrier of defence from the British on the

north, and Indian tribes in the territory. At dinner-table with the heads of departments, the Board of the Treasury, and the leaders of public sentiment in Congress, he dwelt upon and enforced these arguments. His was the first proposal made for the purchase of the public lands. If his scheme of purchase failed, other propositions for Western settlement, he said, would fail also. His statements made a deep impression upon the heads of the government and upon the Southern members of Congress, whose influence he especially desired. They promised him their co-operation and their votes. Other parties now appeared before Congress with similar proposals of purchase for private speculation. Seeing that Dr. Cutler had more influence with Congress than they could bring to bear, they secretly placed their proposals in his hands; and he bought about five and a half million acres, of which only a million and a half were for his own company.

It was during these negotiations that the Ordinance of 1787 for the organization and government of the Northwestern Territory was drawn and passed. This, in fact, was the preliminary question to be settled; for unless the organic laws of the territory were fixed on an irrevocable basis, which harmonized with the moral, social, and political convictions of parties who were proposing to purchase, the lands would have no commercial value to them. Dr. Cutler represented Massachusetts men, who had, in their Constitution of 1780, abolished slavery, established public schools for general education, and framed the most advanced code of laws concerning the liberties and natural rights of man, civil jurisprudence, and public polity, which the world had then seen. No plan of emigration could have succeeded unless the New England man had felt that he was taking his laws and institutions with him to his Western home. The draft of an Ordinance, which had been before Congress for several months, had come down to the 9th of July in the bald and rudimentary condition in which we have seen it was offered for the third reading on the 10th of May.

Congress now awoke to the business of framing an instrument which would be satisfactory to the party proposing to purchase these lands. The interest of Southern members had been awakened and their prejudices allayed by the bland man-

ners and persuasive arguments of the Northern agent. The South really had but little interest in the slavery question as applied to this territory. It had more land than it could occupy; and Southerners probably never conceived the possibility of their needing land or votes north of the Ohio River. The chief motive of the Southern members in voting unanimously for the Ordinance was doubtless to relieve the financial embarrassment of the government, and to bring the public lands into the market at the highest price.* It must also be borne in mind that there was then, and for the next five years, more antislavery sentiment in the South than ever existed there before or since. Mr. Jefferson, Patrick Henry, George Mason, George Wythe, St. George Tucker, and other prominent men of Virginia, were theoretically pronounced abolitionists. In these years there were State abolition societies in Virginia, Maryland, and Delaware, which held regular meetings, and developed more radical opinions as to the rights of man, and the civil and social equality of the negro, than Phillips or Garrison ever uttered. There were ten of these abolition societies in the Southern States during that period. Slavery had not then become a political and sectional issue.

The first public development of a change of policy on the matter of an ordinance was on the 9th of July, when the subject was referred to a new committee. Can there be any doubt that the character of the new Ordinance had been discussed in the negotiations for the purchase, and that the members of that committee were chosen by design, and with a definite understanding of what they were to do? Colonel Carrington of Virginia was made chairman. Lee of Virginia was also put on the committee. We have seen that they were Dr. Cutler's

* The remarks of Mr. Randolph of Virginia, in February, 1803, on the question of voting land to the Ohio School Fund, illustrate this point. "He believed," he said, "that the appropriation, while it protected the interests of literature, would enhance the value of property. Can we suppose that emigration will not be promoted by it, and that the value of lands will not be enhanced by the emigrant obtaining the fullest education for his children? and is it not better to receive two dollars an acre with an appropriation for schools, than seventy-five cents an acre without such appropriation? Indubitably it is. Gentlemen who are not operated upon by this principle, and a desire to establish a liberal provision for schools, will vote against the bill." — *Annals of Cong.*, 7th Cong., 2d sess., p. 586.

intimate friends and advisers. Mr. Dane was his neighbor and representative, but there were reasons, as we shall presently see, why he was not made chairman. Mr. Smith of New York was one of the members to whom Dr. Cutler brought letters of introduction, and with whom he was intimate. Mr. Kean of South Carolina was probably a member of the Southern circle, with whom Dr. Cutler spent much of his time, whose views were known, and who would aid in carrying the three extreme Southern States. A majority of the members were composed of Southerners, in order to ward off the impression that it was a Northern measure. This committee took Dr. Cutler into their counsels, and, as his journal states, furnished him with a copy of the Ordinance which had been prepared, and asked him to make remarks and propose amendments, which he did. He delivered the draft with his remarks and amendments to the committee on the afternoon of July 10, and left New York that evening for a brief visit to Philadelphia, for the purpose of visiting Dr. Franklin, Dr. Rush, and other scientific correspondents of his,—he being a member of the American Philosophical Society of Philadelphia. He had a desire also to look in upon the Convention for the formation of the Constitution, there in session.*

He returned to New York on the evening of the 18th of July, and on the morning of the 19th called upon members of Congress. He then was shown the Ordinance which had passed on the 13th, and of which he had heard nothing during his absence.† He says: “The amendments I proposed have all been made except one, and that is better qualified. It is that we should not be subject to continental taxation until we were entitled to a full representation in Congress. This could not be

* The narrative he gives in his journal of his visit to Dr. Franklin is the most charming personal description of that eminent man which is extant. Mr. Sparks has printed it in his *Life of Dr. Franklin*, Vol. I. p. 519. Dr. Cutler's account of his visits to Dr. Rush, to the botanical garden of William Bartram, and to the studio of Charles Wilson Peale, the painter, are exceedingly interesting, and have never been printed. Dr. Rush informed him that they were endeavoring to raise a fund to establish a botanical garden in that city, and that he (Dr. Cutler) was the only person who had been named to take the superintendency, and give botanical lectures to the students in the University.

† The Ordinance was first publicly printed in the “*Pennsylvania Herald*” on the 25th of July.

fully obtained, for it was considered in Congress as offering a premium on emigration."

On the 11th of July, the day after Dr. Cutler presented his amendments and views in writing, the committee reported the Ordinance to Congress, and it took its first reading. In this stage it had no antislavery clause, though one seems to have been agreed upon in committee. The next day, the 12th, this clause was offered by Mr. Dane, and without objection accepted as an amendment. Several minor amendments were also made, which Mr. Force in his paper specifies, and on the 13th the Ordinance, as amended, was passed in Congress by a unanimous vote, eight States only being represented.

What Dr. Cutler, Mr. Dane, Colonel Carrington, or any other member of the committee contributed to the Ordinance, the public records of the time are silent concerning. Mr. Dane doubtless wrote the draft, and performed the clerical duties of the committee. Its style, however, which is smooth, compact, and elegant, is not the style of Mr. Dane, which was loose, ragged, and inelegant. "He had no graces of style," says his biographer, "either native or borrowed; neither did he ever seek for any." * Some other hand than Mr. Dane's must have been concerned in its formation and revision. Mr. Dane assumed, however, the responsibility, under an entire misapprehension of the sentiments of Congress, of withholding the antislavery clause till the second reading. What would the Ordinance have been for the purpose for which it was intended without that clause? In the letter he wrote to Rufus King, July 16, three days after the passage, he says: "When I drew the Ordinance, which passed, a few words excepted, as I originally formed it, I had no idea the States would agree to the sixth article prohibiting slavery, as only Massachusetts of the Eastern States was present, and therefore omitted it in the draft; but, finding the House favorably disposed on the subject, after we had completed the other parts, I moved the article, which was agreed to without opposition." This statement shows how little he had entered into the work which had been done by another Massachusetts man to prepare Congress for this action.

The fact seems to be that the Massachusetts members never

* C. T. Thayer, in *History of Beverly*, p. 143.

engaged with much zeal in any plan for settling the North-western Territory. They saw it would draw away the capital of their own State and thousands of its most enterprising citizens, as it did. No part of the State would suffer so much as Mr. Dane's own Essex District, where the shareholders of the Ohio Company chiefly resided. Massachusetts had an immense unoccupied territory in the Province of Maine on the market, and Maine was a part of her own jurisdiction. Dr. Cutler made use of this fact in his negotiations with Congress, — threatening, in case they did not give him the terms he desired, that the company would buy lands of Massachusetts. The Massachusetts members could not openly oppose the Western movement, because it was popular with their constituents, who had what was then called "the Ohio fever." Dr. Cutler did not have much confidence in the professed sympathy of his State delegation, and did not take them into his full confidence. He says in his journal: "Holton, I think, may be trusted; Dane must be carefully watched, notwithstanding his professions." Of Southern members he speaks thus: "Grayson, R. H. Lee, and Carrington are certainly my warm advocates. Lee tells me he has a speech, an hour long, prepared in my behalf, which he will deliver when he has an opportunity."

Mr. Dane in his letter to Rufus King seemed to be wholly unconscious of the fact that the Ordinance was a matchless specimen of legislation and jurisprudence. He rather spoke of it in apologetic terms, as a piece of patchwork hastily put together. He says: "With pleasure I communicate to you what we are doing in Congress, not so much from the consciousness that what we do is well done, as from a desire that you may be acquainted with our proceedings. . . . We have been employed about several objects, — the principal of which has been the Government enclosed [meaning the Ordinance] and the Ohio purchase. The former you will see is completed, and the latter will probably be completed to-morrow. We tried one day to patch up —'s ideas [the name is illegible] of Western government, started new ideas, and committed the whole to Carrington, Dane, R. H. Lee, Smith, and Kean. We met several times, and at last agreed on some principles, — at least Lee, Smith, and myself. We found ourselves rather

pressed. The Ohio Company appeared to purchase a large tract of Federal lands, — about six or seven millions of acres [which is an overstatement of the quantity], and we wanted to abolish the old system, and get a better one for the government, and we finally found it necessary to adopt the best system we could get. All agreed finally to the enclosed plan except A. Yates.”*

If the Ordinance had been his own sole production, he would doubtless have been more conscious of its merits, and spoken of it in more affectionate and complimentary terms.

The Ordinance of 1787 and the Ohio purchase were parts of one and the same transaction. The purchase *would* not have been made without the Ordinance, and the Ordinance *could* not have been enacted except as an essential condition of the purchase. Both were before Congress and under consideration at the same time, and Colonel Carrington was the chairman of the committees which reported and carried through both measures. The dates of their passage were separated by an interval of only two weeks. The Ordinance has hitherto been treated as an isolated piece of legislation, and as such it has been a marvel and an enigma. When considered together, every fact in the origin and passage of the Ordinance is explained, and is found to be connected with the agency of Dr. Manasseh Cutler. He was the person of the most varied accomplishments, the widest learning, the largest personal influence, and the one most active and deeply interested in the subject-matter of the Ordinance of all who had a part in its formation. He was then forty-five years of age, and in the prime of his manhood and mental culture. Mr. Dane was eleven years younger, and only five years before had commenced the practice of law. At the age of twenty-one years he was at work on his father's farm, and had not commenced his preparation for college. Four years after graduating he spent as a school-teacher. He had written nothing at that time which was in print. Later in life, he had the reputation of an author; but his “General Abridgment and Digest of American Law” appeared from 1823 to 1829, thirty-six to forty-two years later. He entered Congress in 1785, retired

* New York Tribune, February 28, 1855.

in 1788, and was never afterwards a member of the national Legislature. In 1795 and in 1812 he served as commissioner to revise the statutes of Massachusetts. Late in life he prepared an elaborate work, entitled "A Moral and Political Survey of America," which was never printed. His affectionate biographer says of it: "The 'Survey' evinces unquestionably great research, and comprehends a vast amount of information; but it is marked with the same neglect of style which is so obvious in Mr. Dane's other writings."

The Ordinance of 1787 is a condensed abstract of the Massachusetts Constitution of 1780. Every principle contained in the former, either in a germinal or developed form, except that relating to the obligation of contracts, and some temporary provisions relating to the organization of the territorial government, is found in the latter, and often in the same phraseology. The Ohio Company, organized in Massachusetts, and mainly composed of Massachusetts men, was the party proposing to purchase these lands. That these prospective emigrants should desire and claim the privilege of living under the laws and with the institutions they had cherished and helped to frame, was as natural and reasonable as that this boon should have been granted to them by Congress. There was no intention on the part of Congress, or of any member, of forming an ordinance on this basis, until after Dr. Cutler had arrived in New York on the 5th of July. The idea was as new to Mr. Dane as to any member. His previous efforts at ordinance-making had been in another direction. The new point of procedure having been fixed, the drafting of the Ordinance was much a matter of clerical routine. The work was evidently turned over to Mr. Dane, he being the only member of the committee who was familiar with the Massachusetts Constitution. It is singular that in the several letters and statements on the subject which Mr. Dane has left behind him, no mention is made of Dr. Cutler, or of his presence in New York at that time. In his letter to Mr. King, written three days after the passage of the Ordinance, he did say that "the Ohio Company appeared to purchase a large tract of Federal lands"; but in his letters to Mr. Webster and to the Indiana Historical Society, written from forty to fifty years later, he

forgot to mention even the presence of the Ohio Company, and claimed the whole credit of the Ordinance for himself. In his letter of March 26, 1830, to Mr. Webster, he says: "In pages 389, 390, Sect. 3, Vol. VII. [of General Abridgment and Digest], I mention the Ordinance of '87 was framed, mainly, from the laws of Massachusetts. This appears on the face of it; meaning the titles to estates, and nearly all the six articles, the *permanent* and important parts of it, and some other parts; and, in order to take the credit of it to Massachusetts, I added 'this Ordinance (formed by the author, etc.) was framed,' etc. . . . I have never claimed *originality*, except in regard to the clause against impairing contracts, and perhaps the Indian article, part of the third article, including, also, religion, morality, knowledge, schools, etc." *

His claim in Appendix to the ninth volume of his "General Abridgment and Digest, Note A, published in 1830, is, owing to the obscurity of his style, difficult to understand. He quoted this note in his letter of May 12, 1831, to the Indiana Historical Society. He says: "It will be observed that provisions 4, 5, and 6, some now view as oppressive to the West, were taken from Mr. Jefferson's plan. The residue of the Ordinance consists of two descriptions, one original, as the provisions to prevent legislatures enacting laws to impair contracts previously made, to secure the Indians their rights and property, part of the titles to property made more purely republican and more completely divested of feudality than any other titles in the Union were in July, '87. The temporary organization was new,—no part of it was in the plan of '84. The other description was selected mainly from the Constitution and laws of Massachusetts, as any one may see who knows what American law was in 1787, as: 1. Titles to property by will, by deed, by descent, and by delivery. Here it may be observed that titles to lands once taking root are important, as they are usually permanent; in this case, they were planted in four hundred thousand square miles of territory, and took root, as was intended. 2. All the fundamental, perpetual articles of compact, except as below, as, first, securing forever religious liberty; second, the essential parts of a bill of rights

* Mass. Hist. Soc. Proceedings, 1867-69, p. 479.

declaring that religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and education shall forever be encouraged. These selections from the Code of Massachusetts, as also the titles to property, have created for her an extensive and lasting influence in the West, and of the most republican, liberal, and beneficial kind." *

Some persons reading this note will understand him to say that the clause relating to religion, morality, and education was taken from the Code of Massachusetts; but such was evidently not his intention, as it would contradict the claim he made about the same time in his letter to Mr. Webster. These extracts illustrate Mr. Dane's style of writing, and the claims he has made as to the authorship of the Ordinance. None of these claims were made during the lifetime of Dr. Cutler or of any person immediately concerned in its formation.

There is nothing in the Ordinance of 1787 concerning religion, morality, knowledge, and schools which had not been practically exemplified in the laws and customs of Massachusetts, and which were not embodied in her Constitution of 1780. These principles were happily condensed in the Ordinance into a single sentence as follows: "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." No part of the Ordinance — the antislavery clause alone excepted — has been more noted than this sentence, and it has a place in the constitutions of several of the Western States. There is evidence tending to show that Dr. Cutler was the author of this clause; that it was one of the amendments or suggestions which he made in writing at the request of the committee. Its style, and the efforts he subsequently made for the establishment of the institutions of religion and education in the territory, to be presently noticed, render the inference highly probable. Accepted by the committee and incorporated in the draft by Mr. Dane, he (Mr. Dane) after the lapse of more than forty years may have forgotten its origin. There have been traditions and positive evidence in the family of Dr. Cutler, since his death,

* New York Tribune, July 18, 1875.

that he caused the insertion, in the Ordinance of 1787, of the clause quoted above, and also of the one relating to the prohibition of slavery. Several autograph letters are in the possession of the writer which are evidence on this point.

Dr. Joseph Torrey, an eminent physician of Salem, Mass., who married a daughter of Dr. Cutler, wrote January 30, 1847, to Judge Ephraim Cutler of Ohio as follows: "At a recent professional call at Hamilton,* Brother Temple [Cutler] produced large files of Ohio documents, but I had only time for a hasty examination. I saw among these documents the Ordinance of 1787 on a printed sheet. On its margin was written that Mr. Dane requested Dr. Cutler to suggest such provisions as he deemed advisable, and that at Dr. Cutler's instance was inserted what relates to religion, education, and slavery. These facts have long been known to me as household words." The letter further states that Hon. Caleb Cushing and Hon. Daniel Webster had inquired what agency Dr. Cutler had in framing the famous Ordinance, and as to the authorship of an anonymous pamphlet of twenty-four pages which Dr. Cutler wrote and had printed at Salem in 1787, describing the Northwestern Territory, and entitled "An Explanation of the Map which delineates that part of the Federal Lands comprehended between Pennsylvania West Line, the Ohio and Scioto Rivers, and Lake Erie." †

Temple Cutler, of Hamilton, Mass., writing September 29, 1849, to Judge Cutler of Ohio (both sons of Dr. Cutler), and speaking of the interest in New England on the subject of the Ordinance, says: "Hon. Daniel Webster is now convinced that the man whose foresight suggested some of its articles was our father."

Judge Ephraim Cutler, November 24, 1849, wrote to a gentleman making inquiries on the subject, as follows: "I visited my father at Washington during the last session he attended Congress [1804]. In his boarding-house he occupied a room with

* The town of Ipswich was divided in 1793, and the part of the town where Dr. Cutler resided was set off, and incorporated as the town of Hamilton.

† This pamphlet, now very rare, was reprinted in Nahum Ward's "Brief Sketch of the State of Ohio," Glasgow, 1822, and London, 1823; and a French translation was issued in Paris in 1789. A copy of the original pamphlet was sold at the recent auction sale of Mr. Fields's Library, in New York, for twenty-one dollars.

the reverend gentleman who represented Hampshire and the Connecticut River Counties, whose name I have forgotten. We were in conversation relative to the political concerns of Ohio, the ruling parties, and the effects of the [Ohio] Constitution in the promotion of the general interest; when he observed that he was informed that I had prepared that portion of the Ohio Constitution which contained the part of the Ordinance of July, 1787, which prohibited slavery. He wished to know if it was a fact. On my assuring him it was, he observed that he thought it a singular coincidence, as he himself had prepared that part of the Ordinance while he was in New York negotiating the purchase of the lands for the Ohio Company. I had then not seen the journal he kept while he was in New York at that time. The journal came into my possession during a visit of Dr. Torrey and my sister, Mrs. Torrey, in 1837.” *

Dr. Cutler's interest in the promotion of religion and education in the Northwestern Territory appears in his negotiations with Congress for the Ohio purchase. The general law for the survey and sale of Western lands, passed by Congress May 20, 1785, provided that one section (No. 16) in every township should be reserved for the support of common schools. Dr. Cutler was not satisfied with this provision, and demanded that Congress should donate in addition one section in every township for the support of an educated ministry, and two entire townships for the establishment and support of a university. This new claim was resisted by members of Congress. One bill passed authorizing the Ohio Company's purchase, but without these additional reservations; and Dr. Cutler would not accept it. He packed his trunk, made his parting calls, said he should leave the town immediately, and make his purchase of some of the States. This was somewhat of a ruse on his part, and it turned out as he expected. Members flocked to his room and entreated him to remain, and they would try to get more favorable terms. He wrote out these conditions as a *sine qua non* on which he would make the contract, and brought Congress to vote precisely the terms he

* Judge Cutler, from the time he was three years old till his emigration to Ohio, resided with his grandparents in Connecticut, and hence had lived with his father only on occasional visits.

dictated. He had full powers from the Company to negotiate alone the terms of the purchase; but, if he thought it advisable, when reaching New York, to associate with himself Mr. Winthrop Sargent, he could do so. Near the close of the negotiation he invited Mr. Sargent to join with him, and they both signed the contract.

In an autograph letter to his son Judge Cutler, written August 7, 1818, when he was seventy-six years of age, Dr. Cutler says: "The fact is, the people of Ohio are wholly indebted to me for procuring the grant of those townships [for the University] and the ministers' lands in the Ohio Company's purchase; and indeed for similar grants in Judge Symmes's purchase. When I applied to Congress for the purchase, no person, to my knowledge, had an idea of asking for such grants. When I mentioned it to Mr. Sargent and others friendly to the measure, they were rather opposed, fearing it would occasion an increased price for the lands. I had previously contemplated the vast benefit that must be derived from it in future time, and I made every exertion to obtain it. Mr. Sargent, indeed, cordially united with me in endeavoring to surmount the difficulties which appeared in the way, till the object was obtained. . . . It is well known to all concerned with me in transacting the business of the Ohio Company, that the establishment of a University was a first object, and lay with great weight on my mind."

The Ohio University, at Athens, the first college in the Northwest, was established on this foundation; and Dr. Cutler himself drew the act of incorporation, arranged the course of study, and selected the instructors. He was the author of that public policy which has been so beneficial to the educational interests of these Northwestern States, of reserving public lands for the support of universities.

Three of his sons came to Ohio and took prominent parts in its settlement. Dr. Cutler himself never removed his residence from Massachusetts. He came to Marietta, in his sulky, on a visit of inspection, and to attend a meeting of the Directors of the Ohio Company, in the summer of 1788, where he was honored as one of the chief promoters of the enterprise. He died in the parish where he had been the settled minister

for more than fifty-two years, July 28, 1823, at the age of eighty-one.

His eldest son, Judge Ephraim Cutler, already mentioned, was a member of the Territorial Legislature, Judge of the Court of Common Pleas, and member of the Convention which formed the Constitution of Ohio, in which he almost wholly shaped and drafted the judicial system of the State, and successfully resisted the well-laid scheme of setting aside the antislavery provision of the Ordinance. He was later a member of the State Legislature, and planned the common-school system of the State. Another son, Jervis Cutler, said to be the first emigrant who landed at Marietta, wrote a "Topographical Description of the States of Ohio, Indiana Territory and Louisiana, comprising the Ohio and Mississippi Rivers," 219 pp. 12mo, which was published in 1812, and illustrated with engravings by his own hand. Judge Cutler's son, Hon. William P. Cutler, still living at Marietta, and one of the most prominent men of Southeastern Ohio, was a member of Congress from Ohio from 1860 to 1862.

The fact that no biography of so eminent a man as Dr. Manasseh Cutler has appeared, requires a word of explanation. Twenty-seven years ago, a gentleman who had written several historical works of merit, and who is now librarian of one of the State historical societies, applied to the family of Dr. Cutler for his manuscripts and papers, in order to prepare his biography; and the papers which the family then possessed, or copies of them, were delivered to him. A printed circular, dated March 8, 1849, which he sent to the correspondents and friends of Dr. Cutler, asking for further contributions of letters and other materials, is before the writer. During these long years this gentleman has professed to be deeply interested in the work, and to be constantly finding new evidences of his subject's versatility of genius and works of usefulness; but the biography itself, for some unexplained reason, has not been published. The materials in the hands of the biographer have not been accessible to the writer in the preparation of this paper; but the family in Ohio, at the writer's request, have kindly furnished to him such papers as they possess. A recent note from the biographer assures the writer that the long-promised life of Dr. Cutler will soon appear.

The delay in the publication of his biography will explain why the name of Dr. Manasseh Cutler is not more familiar to the historical students of the Northwestern States, and has not hitherto been associated with the origin and history of the Ordinance of 1787.

WILLIAM FREDERICK POOLE.

ART. II. — *Native Races of the Pacific States*. By HUBERT HOWE BANCROFT. New York: D. Appleton & Co. — *Civilized Nations*, Vol. II.

THE first accounts of the pueblo of Mexico created a powerful sensation in Europe. In the West India Islands the Spanish discoverers found small Indian tribes under the government of chiefs; but on the continent, in the Valley of Mexico, they found a confederacy of three Indian tribes under a more advanced but similar government. In the midst of the valley was a large pueblo, the largest in America, surrounded with water, approached by causeways; in fine, a water-girt fortress impregnable to Indian assault. This pueblo presented to the Spanish adventurers the extraordinary spectacle of an Indian society lying two ethnical periods back of European society, but with a government and plan of life at once intelligent, orderly, and complete. There was aroused an insatiable curiosity for additional particulars, which has continued for three centuries, and which has called into existence a larger number of works than were ever before written upon any people of the same number and of the same importance.

The Spanish adventurers who captured the pueblo of Mexico saw a king in Montezuma, lords in Aztec chiefs, and a palace in the large joint-tenement house occupied, Indian fashion, by Montezuma and his fellow-householders. It was, perhaps, an unavoidable self-deception at the time, because they knew nothing of the Aztec social system. Unfortunately it inaugurated American aboriginal history upon a misconception of Indian life which has remained substantially unquestioned to the present hour. The first eyewitnesses gave the keynote to

this history by introducing Montezuma as a king, occupying a palace of great extent and crowded with retainers, in the midst of a grand and populous city over which, and much beside, he was reputed master. But king and kingdom were in time found too common to express all the glory and splendor the imagination was beginning to conceive of Aztec society; and emperor and empire gradually superseded the more humble conception of the conquerors.

At this late day an enthusiasm and an industry great enough to produce the five volumes entitled "The Native Races of the Pacific States" inspire our respect. Enthusiasm coupled with industry has performed great work for mankind in all ages; but when controlled by a glowing and unguarded imagination, there is danger, as these volumes witness, of a misconception of the materials under treatment, of inflation, of exaggeration, of delusive theories, and of false conclusions. It is an ungracious task to point out, from a sense of duty, old errors herein reproduced and re-endorsed, and thus come into antagonism with an author for whom his critic can but feel a sentiment of respect.

In the second volume of this work, with which alone this article will be concerned, the high and mighty emperor of the Aztecs, whose supposed subjects must have numbered, the Tezcucans and Tlacopans included, nearly two hundred and fifty thousand Red Indians, and the great Aztec empire, which covered an area as large as the whole State of Rhode Island, are again brought magnificently before our astonished minds.*

* The Valley of Mexico, including the adjacent mountain slopes and excluding the area covered by water, was about equal to the State of Rhode Island, which contains thirteen hundred square miles; an insignificant area for a single American Indian tribe. But the Confederacy had subdued a number of tribes southward and southeastward from the valley as far as Guatemala, and placed them under tribute. Under their plan of government it was impossible to incorporate these tribes in the Aztec Confederacy, the barrier of language furnished an insuperable objection; and they were left to govern themselves through their own chief, and according to their own usages and customs. As they were neither under Aztec government nor Aztec usages, there is no occasion to speak of them as a part of the Aztec Confederacy, or even as an appendage of its government. The power of this Confederacy did not extend a hundred miles beyond the Valley of Mexico on the west, northwest, north, northeast, or east sides, in each of which directions they were confronted by independent and hostile tribes.

The population of the three confederate tribes was confined to the valley, and did

There is even a plethora of empires, kings, and lords in this volume,—for example, the Toltec empire, the Chichemec empire, and the Aztec empire, one after the other; the Votan empire and the Quiche empire in the little territory of Guatemala; the kings of Tezcuco, the kings of Tlacopan, the kings of Michoacan, the kings of Tollan, and other kings as thick as blackbirds; besides princes, “nobles, gentry, plebeians, and slaves,” * *ad nauseam*. All the grand terminology of the Old World, created under despotic and monarchical institutions during several thousand years of civilization, to decorate particular men and classes of men, has been lavished by our author with American prodigality upon plain Indian sachems and war-chiefs, without perceiving that thereby the poor Indian was grievously wronged, for he had not invented such institutions nor formed such a society as these terms imply.

This work, it must be admitted, is in entire harmony with the body of works on Spanish America. It embodies their extravagances, their exaggerations, their absurdities, and runs beyond them in fervor of imagination and in recklessness of statement. A psychological fact, which deserves a moment's notice, is revealed by these works, written as they were with a desire for the truth and without intending to deceive. These writers ought to have known that every Indian tribe in America was an organized society, with definite institutions, usages, and customs, which, when ascertained, would have perfectly explained its government, the social relations of the people, and their plan of life. Indian society could be explained as completely and understood as perfectly as the civilized society of Europe or America, by finding its exact organization. This, strange to say, was never attempted, or at least never accomplished, by any one of these numerous and volu-

not probably exceed two hundred and fifty thousand souls, if it equalled that number, which would give nearly twice the present population of New York to the square mile, and a greater population to the square mile than Rhode Island now contains. The Spanish estimates of Indian populations were gross exaggerations. Those who claim a greater population for the Valley of Mexico than that indicated will be bound to show how a barbarous people, without flocks and herds and without field agriculture, could have sustained in equal areas a larger number of inhabitants than a civilized people armed with these advantages.

* Civilized Nations, p. 124.

minous writers. To every author, from Cortes and Bernal Diaz to Brasseur de Bourbourg and Hubert H. Bancroft, Indian society was an unfathomable mystery; and their works have left it a mystery still. Ignorant of its structure and principles, and unable to comprehend its peculiarities, they invoked the imagination to supply whatever was necessary to fill out the picture. When the reason, from want of facts, is unable to understand and therefore unable to explain the structure of a given society, imagination walks bravely in and fearlessly rears its glittering fabric to the skies. Thus, in this case, we have a grand historical romance, strung upon the conquest of Mexico as upon a thread; the acts of the Spaniards, the pueblo of Mexico, and its capture, are historical, while the descriptions of Indian society and government are imaginary and delusive. These picturesque tales have been read with wonder and admiration, as they successively appeared, for three hundred and fifty years; though shown to be romances, they will continue to be read, as Robinson Crusoe is read, not because they are true, but because they are pleasing. The psychological revelation is the eager, undefinable interest aroused by any picture of ancient society. It is felt by every stranger when he first walks the streets of Pompeii, and, standing within the walls of its roofless houses, strives to picture to himself the life and the society which flourished there eighteen hundred years ago. In Mexico the Spaniard found an organized society several thousand years further back of their own than Pompeian society, in its arts, institutions, and state of advancement. It was this revelation of a phase of the ancient life of mankind, which possessed, and still possesses, such power to kindle the imagination and inspire enthusiasm. It caught the imagination and overcame the critical judgment of Prescott, our most charming writer; it ravaged the sprightly brain of Brasseur de Bourbourg; and it carried up in a whirlwind our author at the Golden Gate.

The appearance of this work just as it is, and the commendation it has received from our critical journals, reveal with painful distinctness the fact that we have no science of American Ethnology. Such a science, resting as it must upon verified facts, and dealing with the institutions, arts, and inventions,

usages and customs, languages, religious beliefs, and plan of government of the Indian tribes, would, were it fairly established, command as well as deserve the respect of the American people. With the exception of an amateur here and there, American scholars have not been willing to devote themselves to so vast a work. It may be truly said, at this moment, that the structure and principle of Indian society are but partially known, and that the American Indian himself is still an enigma among us. The question is still before us, as a nation, whether we will undertake the work of furnishing to the world a scientific exposition of Indian society, or leave it as it now appears, crude, unmeaning, unintelligible, a chaos of contradictions and puerile absurdities. With a field of unequalled richness and of vast extent, with the same Red Race in all the stages of advancement indicated by three great ethnical periods, namely, the status of savagery, the Lower status of barbarism, and the Middle status of barbarism,* more persons ought to be found willing to work upon this material for the credit of American scholarship. It will be necessary for them to do as Herodotus did in Asia and Africa, to visit the native tribes at their villages and encampments, and study their institutions as living organisms, their condition, and their plan of life. When this has been done from the region of the Arctic Sea to Patagonia, Indian society will become intelligible, because its structure and principles will be understood. It exhibits three distinct phases, each with a cult peculiar to itself, lying back of civilization, and back of the Upper status of barbarism; having very little in common with European society of three hundred years ago, and very little in common with American society of to-day. Its institutions, inventions, and customs find no analogues in those of civilized nations, and cannot be explained in terms adapted to such a society. Our later investigators are doing their work more and more on the plan of

* Indian tribes below the art of pottery, as a number of coast tribes in North and South America, were in savagery; tribes practising this art, as the tribes of the United States east of the Mississippi, but ignorant of the use of adobe bricks and stone in house architecture, were in the Lower status of barbarism; and those tribes who constructed houses of adobe bricks and of stone, but who were ignorant of iron, as the tribes of New and Old Mexico, Central America, and Peru, were in the Middle status of barbarism.

direct visitation ; and I make no doubt a science of American Ethnology will yet come into existence among us, and rise high in public estimation from the important results it will rapidly achieve. Precisely what is now needed is the ascertainment and scientific treatment of this material.

After so general a condemnation of Spanish and American writers, so far as they represent Aztec society and government, some facts and some reasons ought to be presented to justify the charge. Recognizing the obligation, I propose to question the credibility of so much of the second volume of "The Native Races," and of so much of other Spanish histories as relate to two subjects, — the character of the house in which Montezuma resided, which is styled a palace ; and the account of the celebrated dinner of Montezuma, which is represented as the daily banquet of an imperial potentate. Neither subject, considered in itself, is of much importance ; but if the accounts in these two particulars are found to be fictitious and delusive, a breach will be made in a vital section of the fabric of Aztec romance, now the most deadly encumbrance upon American Ethnology.

It may be premised that there is a strong probability, from what is known of Indian life and society, that the house in which Montezuma lived was a joint-tenement house of the aboriginal American model, owned by a large number of related families, and occupied by them in common as joint-proprietors ; that the dinner in question was the usual single daily meal of a communal household, prepared in a common cook-house from common stores, and divided, Indian fashion, from the kettle ; and that all the Spaniards found in Mexico was a simple confederacy of three Indian tribes, the counterpart of which was found in all parts of America.

It may be premised further, that the Spanish adventurers who thronged to the New World after its discovery found the same race of Red Indians in the West India Islands, in Central and South America, in Florida, and in Mexico.* In their

* " But among all the other inhabitants of America there is such a striking similitude in the form of their bodies, and the qualities of their minds, that notwithstanding the diversities occasioned by the influence of climate, or unequal progress in improvement, we must pronounce them to be descended from one source." — *Robertson's History of America*, Law's ed., p. 69.

mode of life and means of subsistence, in their weapons, arts, usages, and customs, in their institutions, and in their mental and physical characteristics, they were the same people in different stages of advancement. No distinction of race was observed, and none in fact existed. They were broken up into numerous independent tribes, each under the government of a council of chiefs. Among the more advanced tribes, confederacies existed, which represented the highest stage their governmental institutions had attained. In some of them, as in the Aztec confederacy, they had a principal war-chief, elected for life or during good behavior, who was the general commander of the military bands. His powers were those of a general, and necessarily arbitrary when in the field. Behind this war-chief — noticed, it is true, by Spanish writers, but without explaining or even ascertaining his functions — was the council of chiefs, “the great council without whose authority,” Acosta remarks, Montezuma “might not do anything of importance.”* The civil and military powers of the government were in a certain sense co-ordinated between the council of chiefs and the military commander. The government of the Aztec confederacy was essentially democratical, because its organization and institutions were so. If a more special designation is needed, it will be sufficient to describe it as a military democracy.

The Spaniards who overran Mexico and Peru gave a very different interpretation of these two organizations. Having found, as they supposed, two absolute monarchies with feudal characteristics, the history of American Indian institutions was cast in this mould. The chief attention of Europeans in the sixteenth century was directed to these two governments, to which the affairs of the numerous remaining tribes and confederacies were made subordinate. Subsequent history has run in the same grooves for more than three centuries, striving diligently to confirm that of which confirmation was impossible. The generalization was perhaps proper enough, that if the institutions of the Aztecs and Peruvians, the most advanced Indian tribes, culminated in monarchy, those of the Indian tribes

* *The Natural and Moral History of the East and West Indies*, Lond. ed., 1604, Grimstone's Trans., p. 485.

generally were essentially monarchical, and therefore those of Mexico and Peru should represent the institutions of the Red Race.

It may be premised, finally, that the histories of Spanish America may be trusted in whatever relates to the acts of the Spaniards, and to the acts and personal characteristics of the Indians ; in whatever relates to their weapons, implements, and utensils, fabrics, food, and raiment, and things of a similar character. But in whatever relates to Indian society and government, their social relations and plan of life, they are wholly worthless, because they learned nothing and knew nothing of either. We are at full liberty to reject them in these respects, and commence anew ; using any facts they may contain which harmonize with what is known of Indian society. It was a calamity to the entire Red Race that the achievements of the Village Indians of Mexico and Central America, in the development of their institutions, should have suffered a shipwreck so nearly total. The only remedy for the evil done them is to recover, if possible, a knowledge of their institutions which alone can place them in their proper position in the history of mankind.

In order to understand so simple an event in Indian life as Montezuma's dinner, it is necessary to know certain usages and customs, and even certain institutions of the Indian tribes generally, which had a direct bearing upon the dinner of every Indian in America at the epoch of the Spanish conquest. Although it may seem strange to the reader, it requires a knowledge of several classes of facts to comprehend this dinner ; because it is necessary to rid the mind of a fictitious account before another can be substituted. For this purpose, and within the necessary limits of this article, I shall endeavor to explain, in outline, the following institutions and customs which were substantially universal in the Indian family, and therefore existed, presumptively, among the Aztecs. Reference will also be made to what is known of their existence and practice among the latter. They are the following : —

1. The organization in gentes, phratries, and tribes.
2. The ownership of lands in common.
3. The law of hospitality.
4. The practice of communism in living.
5. The

communal character of their houses. 6. Their custom of having but one prepared meal each day, — a dinner. 7. Their separation at meals, the men eating first, and the women and children afterwards.

Since the writers upon Aztec affairs did not consider any of these subjects worthy of investigation except the second, it is necessary to show their general prevalence in other Indian tribes to create a probability of their prevalence among the Aztecs, as well as to give effect to such traces of their existence among the latter as these writers have incidentally furnished. The necessity for this lengthy process is entailed upon us by the imperfection of the Spanish accounts.

1. *The Organization in Gentes, Phratries, and Tribes.*

The gentile organization opens to us one of the oldest and most widely prevalent institutions of mankind. It furnished the nearly universal plan of government of ancient society, Asiatic, European, African, Australian, and American. It was the instrumentality by means of which society was organized and held together. Commencing in savagery, and continuing through the three sub-periods of barbarism, it remained until the establishment of political society, which did not occur until after civilization had commenced. The Grecian gens, phratry, and tribe, the Roman gens, curia, and tribe, find their analogues in the gens, phratry, and tribe of the American aborigines. In like manner, the Irish sept, the Scottish clan, the phrara of the Albanians, and the Sanskrit *ganas*, without extending the comparison further, are the same as the American Indian gens, which has usually been called a clan. As far as our knowledge extends, this organization runs through the entire ancient world upon all the continents, and it was brought down to the historical period by such tribes as attained to civilization.

It is necessary to know the character and prevalence of this organization among the Indian tribes as a means of understanding Aztec society. The Iroquois, whose system is perfectly known, will afford the best illustration. The Seneca Iroquois tribe is composed of eight gentes. A gens is a body of consanguinei, the members of which bear a common gen-

tile name, as Wolf, Bear, Beaver, Turtle, etc. With descent in the female line, as among the Iroquois, the gens is composed of a supposed female ancestor and her children, together with the children of her female descendants in perpetuity. It includes this ancestor and her children, the children of her daughters and the children of her female descendants, while the children of her sons and the children of her male descendants are excluded. The latter belonged to the gentes of their respective mothers. A moiety only of the descendants of the supposed ancestor belong to the gens. When descent is in the male line, as it was among the Greeks, and among the Mayas of Yucatan, the gens is composed of a supposed male ancestor and his children, together with the children of his sons, and the children of his male descendants in perpetuity, while the children of his daughters, and the children of his female descendants would belong to other gentes.

Each gens had its own sachem and one or more chiefs elected from among its members. The office of sachem was hereditary in the gens, in the sense that it was filled as often as a vacancy occurred, while the office of chief was non-hereditary, because it was bestowed in reward of merit, and died with the individual. We thus distinguish two primary grades of chiefs, of which all other grades were varieties. A son could not be chosen to succeed his father, where descent was in the female line, because he belonged to a different gens, and no gens would accept a sachem or chief from any gens but its own. The office passed from brother to brother, or from uncle to nephew; but, as all male cousins were brothers under their system of consanguinity, the person chosen was not necessarily an own brother; and as all the sons of a person's female cousins were his nephews, the nephew chosen was not necessarily the son of an own sister of the deceased sachem. This rule is mentioned because the Aztec succession was precisely the same as the Iroquois; the office held by Montezuma passing from brother to brother or from uncle to nephew. Assuming the existence of Aztec gentes, with descent in the female line, the Aztec succession is perfectly intelligible.

The gens was individualized by the following rights, privileges, and obligations :—

- I. The right of electing its sachem and chiefs.
- II. The right of deposing its sachem and chiefs.
- III. The obligation not to marry in the gens.
- IV. Mutual rights of inheritance of the property of deceased members.
- V. Mutual obligations of help, defence, and redress of injuries.
- VI. The right of bestowing names upon its members.
- VII. The right of adopting strangers into the gens.
- VIII. A common burial-place.
- IX. A council of the gens.

Want of space precludes an exposition of these characteristics. All the members of the gens were free, and bound to defend each other's freedom; they were all equal in position and in personal rights, the sachem and chiefs claiming no superiority; and they were a brotherhood bound together by the ties of kin. Liberty, equality, and fraternity, though never formulated, were cardinal principles of the gens. These facts are material, because the gens was the unit of their social and governmental system, the foundation upon which Indian society was organized. A structure composed of such units would of necessity bear the impress of their character; for as the unit, so the compound. It serves to explain that sense of personal independence universally an attribute of Indian character. Such and so substantial was the character of the gens as it anciently existed among the American aborigines, and as it still exists in full vitality in many Indian tribes. Upon the gentes rested the phratry, the tribe, and the confederacy of tribes. Three thousand Senecas divided among eight gentes would give an average of three hundred and seventy-five persons to a gens.

Next in the ascending scale of organization is the phratry, consisting of a certain number of gentes reunited in a higher association for certain common objects. The Senecas were in two phratries, each consisting of four gentes, of which those in the same phratry were styled brother gentes to each other, and cousins to the other four. This organization was for social and religious rather than governmental objects. The Cayuga, Onondaga, and Tuscarora tribes had each the same number of gentes, united in the same number of phratries,

while the Oneida and the Mohawk tribes had but three gentes each, and no phratries.

The third stage of organization is the tribe. It is composed of a number of gentes of common lineage, all the members of which speak the same dialect. The tribe held an independent territory, bore a tribal name, and possessed a government administered by a council of chiefs. Out of the gens came the chief, and out of the union of the gentes in a tribe came the council, composed of the chiefs of the gentes. It was the instrument of government, and the only one known to the American aborigines. The great body of the Indian tribes were organized in gentes, precisely like those of the Iroquois, and the phratry is still found among a number of them. Their government was purely social, dealing with persons through their relations to a gens and tribe, and perfectly simple when examined as an organization.

Fourth and last is the confederacy of tribes, which was the ultimate stage of organization, and the highest to which the aborigines attained. It was composed of tribes speaking dialects of the same stock language, the tribes having been formed by the segmentation of an original tribe. Subdivision, followed by separation in area and divergence of speech, would leave each tribe in possession of the same gentes, and with a dialect of the same language, which furnished the elements of union upon which confederacies were formed, and by means of which they were made possible. The Iroquois Confederacy consisted of five tribes, afterwards increased to six, each occupying an independent territory, and remaining under the government of its own council in whatever related to the tribe individually. They were also under the government of a general council of the confederacy in whatever related to their common interests as united tribes.

The council of sachems consisted of fifty members, taken from certain gentes of the several tribes. The offices were hereditary in these gentes, but elective among their members. When a vacancy occurred by the death of a sachem in any tribe, a council of the decedent's gens was convened to elect his successor, in which all the adult male and female members of the gens were entitled to vote. After they had made a choice it

was still necessary that the remaining gentes should accept or reject the nomination. They met for this purpose by phratries. If either of them refused to accept the nominee, his nomination was thereby set aside, and the gens proceeded to make another choice. When the choice made by the gens had been accepted by the phratries, it was still necessary that the new sachem should be "raised up," to use their expression, and invested with his office by the council of the confederacy. Until the ceremony of investiture was performed he could not assume the duties of a sachem. Thus carefully were the rights and the independence of the people guarded in the choice of their sachems and chiefs, the latter obtaining office in much the same manner. Moreover, the gens had power to depose both sachem and chiefs, if for any reason they became unacceptable. This, in a few words, is the whole theory of the office of an Indian chief, an office found in every tribe of the American aborigines, and springing naturally from the gens.

War-chiefs were common in the Iroquois tribes, but when the confederacy was formed they experienced the necessity for a general commander of the forces of the confederacy. Two principal war-chiefs were accordingly created instead of one, both being assigned to the Seneca tribe. They were made hereditary in the Wolf and Turtle gentes, among whose members they were elected like the sachem, and were raised up in the same manner.

The same office reappears among the Aztecs, and was held by Montezuma. It is probable that it was hereditary in a particular gens, and elective among its members, like the office of principal war-chief among the Iroquois. The blazon on the house occupied by Montezuma was an eagle, which of itself creates a presumption that he belonged to the Eagle gens. An elective office implies a constituency; but what was the constituency in this case? We are told there were six electors, four Aztec, one Tezcucan, and one Tlacopan; but who made the electors? Again we are told that it was the prerogative of the incumbent of the office to appoint the six electors to name his successor. This is not the theory of an elective Indian office, and is, moreover, improbable on its face. Historians have not given an exposition of the structure of Aztec society.

For aught that appears the people were an unorganized rabble. An emperor, with lords and nobles, judges, captains, and municipal functionaries appear, — a multitude of officers of all grades, but with no organized society behind them to whom they were responsible. How these men came into their offices, and the tenure by which they were held, is left a mystery. Montezuma appointed them, they would have us believe, because it so easily disposes of the difficulty. But they have mentioned two facts which may enable future investigators to solve the problem of Montezuma's election. It appears that the Aztecs occupied their pueblo in four divisions, precisely as the Tlascalans occupied theirs, each in a distinct quarter, called the four quarters of Mexico. It seems highly probable that these divisions were four Aztec phratries. These again are represented by Tezozomoc and Herrera as falling into subdivisions. It is equally probable that these subdivisions were so many gentes. Each of these subdivisions, as will be shown, held lands in common. When a people organized in gentes, phratries, and tribes gather in a town or city, they settle locally by gentes and tribes, — a necessary consequence of their social organization. The Grecian and Roman gentes and tribes settled in their cities in this manner. For example, the three Roman tribes were organized in gentes and curiæ (ten gentes in a curiæ, and ten curiæ in a tribe), the curia being the analogue of the phratry; and they settled locally at Rome by gentes, by curiæ, and by tribes. The Ramnes occupied the Palatine Hill, the Tities were mostly on the Quirinal, and the Luceres mostly on the Esquiline. If the Aztecs were organized in gentes and phratries, having but one tribe, they would of necessity be found in as many quarters as they had phratries, with each gens of the same phratry in the main locally by itself. The fact that the Aztec office of war-chief passed from brother to brother or from uncle to nephew is confirmed by two elections under the eyes of the Spaniards. Montezuma was succeeded by his brother Cuitlahua, and the latter was succeeded by his nephew Guatemozin. The same thing is known to have occurred in a number of previous successions. It may therefore be suggested as a probable explanation of the mode of election that the office was hereditary

in a gens by the members of which the choice was made. Their nomination was then submitted for acceptance or rejection to the four Aztec phratries, and also to the Tezcucans and Tlacopans, who were directly interested in the selection of the confederate commander. When each had considered and confirmed the nomination, they appointed a person to express their concurrence, whence the six electors. Their function was to compare the votes of their constituents, and if they agreed to announce the result. This is submitted as a conjecture upon the fragments of evidence remaining, but it is seen to harmonize with Indian usages, and with the theory of the office of an elective Indian chief. It may also be mentioned that Montezuma was deposed for cowardice while a prisoner in the hands of Cortes, and his brother Cuitlahua put in his place. Herrera's account makes this a plain and necessary inference ; * thus showing that the power which elected and deposed from office was constantly present. It also implies an organized society, and expresses the vitality of the social system.

Recurring to the Iroquois organization, it may be remarked that the gens was founded upon kin, the phratry upon the kinship of the gentes, the tribe upon dialect, and the confederacy upon stock language. It resulted in a gentile society, fundamentally different from political society, resting upon territory and upon property. It will be noticed further, that the institutions of the Iroquois were essentially democratical, — a fact that will ultimately be found true of every tribe and confederacy of the American aborigines.

Other confederacies existed beside the Iroquois ; among which may be mentioned the Creek Confederacy of six tribes, the Powhattan Confederacy, of which but little is known, the Ottawa Confederacy of three tribes, the Dakota League of the Seven Council Fires, the Confederacy of the Seven Moqui Pueblos in New Mexico, and the Aztec Confederacy of three tribes. Traces of the same organization are found in parts of New and Old Mexico, Central and South America.

It remains to show the prevalence of the gentile organization in America by a reference to the tribes where its exist-

* History of America, Lond. ed., 1725, Stevens Trans., l. c. iii. 66.

ence has been ascertained. The Wyandotes are composed of eight gentes in two phratries, the Creeks of twenty-two gentes, the Cherokees of eight, the Choctas of eight in two phratries, and the Chickasas of twelve in two phratries; the Delawares are composed of three gentes, the Munsees of three, the Mohicans of eleven in three phratries, the Abenakis of ten, the Ojibwas of twenty-three, the Potawattamies of fifteen, the Miamis of ten, the Shawnees of thirteen, the Sauks and Foxes of fourteen, the Blood Blackfeet of five, and the Piegan Blackfeet of eight; the Punks are composed of eight gentes, the Omahas of twelve, the Iowas of eight, the Otoes and Missouris of eight, the Winnebagoes of eight, and the Mandans of seven; the Minnatares of seven, and the Crows of thirteen. The Pawnees are supposed to have six, and the Comanches six; but the fact has been but partially ascertained. On the Northwest Coast the Thlinkets are composed of ten gentes in two phratries, and the Moqui Pueblo Indians of New Mexico of nine gentes. Mr. E. B. Tylor has traced the same organization among the Arawaks of British Guiana, and the Guaranees of Brazil.* Herrera speaks of the division of the Peruvian tribes into clans;† and mentions the fact of descent in the female line among the tribes of the Maranon.‡ He also presents certain facts which establish the existence of gentes among the Mayas of Yucatan, the most advanced Village Indians in North America.§ The "lineage," and the "kindred" so frequently mentioned in his pages as a feature of the social condition of widely separated tribes in North and South America, require the organization into gentes for their explanation. From the evidence adduced it is rendered highly probable that this organization was anciently universal in the Indian family.

A single question remains: whether the Aztecs were organized in gentes and phratries. In the first place we find three Indian tribes united in a confederacy, which gives the two upper members of the organic series. They presuppose the first and second, the gens and the phratry. In the second place we find the Aztecs in four local divisions, answering to as many phratries, and these again in subdivisions, answering

* Early History of Mankind, p. 287.

† Hist. of America, IV. 231.

‡ Ib. 377.

§ Ib. 171.

to as many gentes. In the third place there was an Aztec council of chiefs. This presupposes as many gentes at least as there were members of this council ; since no way is known of explaining the existence of an Indian chief or sachem except through a gens. And lastly, the Aztec, Tezcucan, and Tlacopan tribes, speaking dialects of the Nahuatlac language, are not distinguishable from the other tribes of American aborigines. Far from differing, they were precisely like all other tribes in the external manifestations of their organization, which was simply that of chiefs and people.

2. *The Ownership of Lands in Common.*

Among the Iroquois the public domain was owned by the tribe in common. A person who cultivated land had a possessory right to its use as long as he chose to occupy it ; and upon his death it passed like his personal property to his gentile heirs. This in general was the land tenure of the Northern tribes. The Aztecs, who were one ethnical period in advance of the latter, had carried their land system one degree further. Their lands were divided into three principal parts, one of which was set off for the support of the government, one for the support of religion, and the remainder was reserved for the support of the people, in their social subdivisions. Clavigero remarks that "the lands which were called *Altepetlalli*, that is, those of the communities of cities and villages, were divided into as many parts as there were districts in a city, and every district possessed its own part entirely distinct from and independent of every other. These lands could not be alienated by any means whatever" ;* and he adds in a footnote that the royal laws grant to every Indian village or settlement the territory which surrounds them "to the extent of six hundred Castilian cubits." The "communities of villages," each situated by itself, and owning their lands in common, suggest the gens. The Spanish grants were to the community in common, and were probably founded upon this ancient land-tenure of the aborigines. While the Iroquois held by tribes, the Aztecs held by gentes.

The land-tenure of the Peruvians was analogous. Garci-

* History of Mexico, Phila. ed., 1817, Cullen's Trans., II. 141.

lasso de la Vega, quoting from Blas Valera, remarks that the lands were "divided into three parts, and applied to different uses. The first was for the Sun, his priests and ministers; the second was for the king, and for the support and maintenance of his governors and officers. . . . And the third was for the natives and sojourners of the provinces, which was divided equally according to the needs which each family required.*

While these several statements may not present the exact case either in Mexico or Peru, they sufficiently indicate the ownership of land by communities of persons, probably gentes, with a system of tillage which points to large households. Neither the Aztecs nor any American Indian tribe had attained to a knowledge of the individual ownership of land in fee simple. The knowledge belongs to the period of civilization. There is not the slightest probability that any Aztec owned a foot of land which he could call his own, with power to sell and convey in fee to whomsoever he pleased.

3. *The Law of Hospitality.*

Among the Iroquois, if a man entered an Indian house in any village, it was the duty of the women of the house to set food before him. An omission to do this would have been a discourtesy amounting to an affront. If hungry, he ate; if not, courtesy required that he should taste the food and thank the giver. This would be repeated at every house he entered, and at whatever hour of the day. As a custom it was upheld by a rigorous public sentiment. Lewis and Clarke refer to the same practice among all the tribes of the Missouri. "It is the custom," they remark, "of all the nations of the Missouri to offer every white man food and refreshment when he first enters their tents."† This was simply applying to

* Royal Commentaries of Peru, Lond. ed., 1688, Rycant. Trans., p. 154. Herrera remarks concerning their tillage and common stores as follows: "The Spaniards drawing near to Caxamalca began to have a view of the Inca's army, lying near the bottom of a mountain. . . . They were pleased to see the beauty of the fields, most regularly cultivated, for it was an ancient law among these people that all should be fed out of common stores, and none should touch the standing corn." — *History of America*, IV. 249.

† Travels, Longman's ed., 1814, p. 649.

their white visitors their rule of hospitality among themselves. It tended to equalize subsistence, and while any household possessed a surplus to prevent destitution in any portion of the community. This law of hospitality was universal among the Northern tribes, and it seems to have been universal in the Indian family. It was made possible by their communism in living.

In every part of America which they visited, the Spaniards, although in numbers as a military force, were assigned quarters in Indian houses emptied of their inhabitants for that purpose, and were freely supplied with provisions. Thus, at Tlascala, Cortes and his men "were generously treated, and supplied with all necessaries."* Again, "they entered Cholula, and went to a house where they lodged altogether in safety, and their Indians with them, although upon their guard, being for the present plentifully supplied with provisions."† Although, with their Indian allies, they numbered some two thousand persons, they found accommodations in a single communal or joint tenement-house of the aboriginal American model. Speaking of the Indians of Yucatan, Herrera remarks that "they are still generous and free-hearted, so that they will make everybody eat that comes into their houses, which is everywhere practised in travelling."‡ This is a fair statement of the Iroquois law of hospitality among the Mayas. Pizarro found the same custom among the Peruvians and other tribes of the Andes. When on the coast of Tumbez, and before landing, "ten or twelve floats were immediately sent out with plenty of provisions."§ When he had entered Peru, "Atahualpa's messengers came and presented the governor with ten of their sheep from the Inca, and some other things of small value; telling him very courteously that Atahualpa had commanded them to inquire what day he intended to be at Caxamalca, that he might have provisions on the way."|| These illustrations, which might be multiplied, are sufficient to show the hospitality extended to the Spaniards.

It was an active, well-established custom of Indian society, practised among themselves, and towards strangers from other

* Herrera, *Hist. of Amer.*, II. 279.

† *Ib.* II. 311.

‡ *Ib.* IV. 171.

§ Herrera, III. 399.

|| *Ib.* IV. 244.

tribes, and therefore naturally extended to the people who now for the first time appeared among them. Considering the numbers of the Spaniards, and another fact which the aborigines were quick to notice, namely, that a Spaniard consumed and wasted five times as much as an Indian required, their hospitality in many cases must have been grievously overtaxed.*

Attention has been called to this law of hospitality, and to its universality, for two reasons, — because it implies the existence of common stores which supplied the means for its practice, and because, wherever found, it also implies communistic living in large households. It must be evident that supplies could not have been furnished by the Iroquois, and other Northern tribes, to visitors and to strangers; much less by the Village Indians of Mexico, Central and South America, to the Spanish forces, with such uniformity, if the custom had depended in each case upon the contributions of single families. In that event it would have failed oftener than it would have succeeded. The law of hospitality, as administered by the American tribes, indicates a plan of life among them which has entirely escaped historical notice. Its explanation must be sought in the ownership and cultivation of lands in common, and in the distribution of their produce to households in which communism was practised. Common stores for large households, and possibly for the village with which to maintain its hospitality, are necessary to explain the practice. It could have been maintained on such a basis; and it is difficult to see how it could be maintained on any other.

4. *The Practice of Communism in Living.*

This, again, may be illustrated by Iroquois usages. In their villages they constructed houses, fifty, eighty, and a hundred feet in length, with a hall through the centre, a door at each end, and with the interior partitioned off at intervals of about seven feet. Each apartment or stall thus formed was open on the hall side. Such houses would each accommodate from ten to thirty families. These households were made up on the principle of kin. The married women and their children be-

* "The appetite of the Spaniards appeared to the Americans insatiably voracious, and they affirmed that the Spaniards devoured more food in a day than was sufficient for ten Americans." — *Robertson's History of America*, p. 72.

longed to the same gens, the symbol of which was often painted upon the house, while their husbands belonged to several other gentes. It was thus made up, in the main, of gentile kindred, and presents a general picture of Indian life in all parts of America. Whatever was gained by any member of the household on hunting or fishing expeditions, or raised by cultivation, was made a common stock. Within the household they lived from common stores. After the daily meal was cooked at the several fires, the matron of the household was summoned, and it was her duty to divide the food from the kettle to the several families according to their respective needs. What remained was placed in the custody of another person until it was required by the matron.

Mr. Caleb Swan, who visited the Creek Indians in 1790, remarks that "the smallest of their towns have from twenty to forty houses, and some of the largest from a hundred and fifty to two hundred that are tolerably compact. These houses stand in clusters of four, five, six, seven, and eight together; . . . each cluster of houses contains a clan or family, who eat and live in common." * Lewis and Clarke, speaking of the tribes of the Columbia, observe that "their large houses usually contain several families, . . . among whom the provisions are common, and whose harmony is scarcely ever interrupted by disputes." † The Spanish writers do not mention the practice of communism among the Village Indians of Mexico and Central America. They are barren of practical information concerning their mode of life. A direct modern illustration of the practice among the Mayas of Yucatan is given by Mr. Stephens. At Nohacacab, a short distance east of the ruins of Uxmal, there is a settlement of Maya Indians, whose communism in living was noticed by Mr. Stephens when among them to employ laborers. He remarks that "their community consists of a hundred labradores or working-men; their lands are held in common, and the products are shared by all. Their food is prepared at one hut, and every family sends for its portion; which explains a singular spectacle we had seen on our arrival,—a procession of women and children, each

* Schoolcraft, *Hist. Cond. and Pros. of Indian Tribes*, V. 262.

† *Travels*, p. 443.

carrying an earthen bowl containing a quantity of smoking hot broth, all coming down the same road, and disappearing among the different huts. From our ignorance of the language we could not learn all the particulars of their internal economy, but it seemed to approximate that improved state of association which is sometimes heard of among us; and as this has existed for an unknown length of time, and can no longer be considered experimental, Owen and Fourier might perhaps take lessons from them with advantage." * A hundred working-men indicate a total of five hundred persons depending for their daily food upon a single fire, the provisions being supplied from common stores, and divided from the kettle. It is probably a truthful picture of the life of their forefathers in the House of the Nuns and in the Governor's House at Uxmal at the period of European discovery. The communism of the Aztecs is illustrated by Montezuma's dinner.

5. *The Communal Character of Indian Houses.*

This important subject can only be glanced at. In an article prepared for Johnson's Cyclopædia on the "Architecture of the American Aborigines," to which reference is made, I have presented the ground-plans of the houses of the principal Indian tribes for the purpose of showing that the principle of communism in living entered into and determined their character. From the houses of the Northern Indians, each large enough for several families, to the adobe and stone houses of the Village Indians of New Mexico, each containing from fifty to five hundred apartments, and to the houses of dressed stone on elevated platforms at Uxmal, Chichen-Itza, and Palenque, all alike were joint-tenement houses. These ground-plans show that they were designed to be occupied by groups, composed, probably, of related families, whose sections were separated from each other by solid partition walls. Whenever Indian families are gathered in large households, the latter practice communism.

The houses of the Aztecs were no exception to the rule. Their size led the Spaniards to describe the largest of them as palaces, and thus they have formed a part of the staple of

* Incidents of Travel in Yucatan, II. 14.

Aztec romance. On the march to Mexico, Cortes and his four hundred men, with some hundreds of Indian allies, found accommodations in single houses of the kind described. Thus, having "come down into the plain, they took up their quarters in a country house that had many apartments."* "At Iztapalapa he was entertained in a house that had large courts, upper and lower floors, and very delightful gardens. The walls were of stone, the timber work well wrought. There were many and spacious rooms, hung with cotton hangings extraordinary rich in their way."† The house in which Montezuma lived will be elsewhere referred to.

6. *The Custom of having but one prepared Meal each Day, — a Dinner.*

This again may be illustrated by the usages of the Iroquois, who had but one cooked meal each day. It was as much as their resources and organization for housekeeping could furnish, and was as much as they needed. It was prepared and served before the noonday hour (ten or eleven o'clock), and may be called a dinner. At this time the principal cooking for the day was done. After its division at the kettle, it was served in earthen or wooden bowls to each person. They had neither tables, nor chairs, nor plates, nor any room in the nature of a dining-room or kitchen, but ate as best suited them, the men first, and the women and children afterwards. That which remained was reserved for any member of the household when hungry. Towards evening the women cooked hominy, the maize being pounded into bits the size of a kernel of rice, which, when boiled, was put aside to be used as a lunch in the morning or at evening, and for the entertainment of visitors. They had neither a breakfast nor a supper. Each person, when hungry, ate of whatever food the house contained. This is also a fair picture of Indian life in general in America when discovered.

Although the Village Indians were one ethnical period in advance of the Iroquois, there can be little doubt that their mode of life in this respect was precisely the same. Among the Aztecs we know that a dinner was provided about midday,

* Herrera, II. 320.

† Ib. II. 325.

but have no knowledge of an Aztec breakfast or supper. One prepared meal each day was as much as their mode of life permitted, or rendered necessary. Civilization, with its diversified industries, its multiplied products, and its monogamian family, affords a breakfast and supper in addition to a dinner, but these are no older than civilization itself. Clavigero attempts to invest the Aztecs with a breakfast, but he incontinently gives up the supper. "After a few hours of labor in the morning," he observes, "they took their breakfast, which was most commonly *atolli*, a gruel of maize, and their dinner after midday; but among all the historians we can find no mention of their supper."* The "gruel of maize" spoken of as the Aztec breakfast suggests the hominy of the Iroquois, which like it was probably kept prepared as a lunch for the hungry. There is no reason for supposing that there was a prepared breakfast among the Aztecs, or any gathering of the household for a morning repast.

7. *The Custom under which the Men ate first and by themselves, and the Women and Children afterwards.*

This usage has been noticed so generally among the Indian tribes that I believe it may be said to have been universal among them. It was a consequence of the rudeness of their mode of life and of that imperfect appreciation of the female sex which appertains to their stage of advancement. Yet, from what is known of their house-life, of the production of their food, and of the management of their affairs, they were indebted for their material progress to their women, — patient, industrious, and hardy, whose virtues have never been celebrated.

Robertson states the usage as general: "They must approach their lords with reverence, they must regard them as more exalted beings, and are not permitted to eat in their presence."† The Spanish writers afford but little direct information upon this subject. Herrera remarks that "the women of Yucatan are rather larger than the Spanish, and generally have good faces, . . . but they would formerly be drunk at their festivals, though they did eat apart."‡ And Sahagun, speaking

* History of Mexico, II. 262.

† History of America, p. 78.

‡ Herrera, History of America, IV. 175.

of the ceremony of baptism among the Aztecs, observes that "to the women, who ate apart, they did not give cacao to drink." * At the dinner of Montezuma a practical illustration is afforded of this usage, the men eating first and by themselves.

If the reader has had sufficient patience to follow the exposition, in outline, of the foregoing institutions, usages, and customs, it will enable him to understand, in a general sense, the houses of the Aztecs, and the dinner of an Aztec household, which remain to be considered.

Not a vestige of the ancient pueblo of Mexico (Tenochtitlan) remains to assist us to a knowledge of its architecture. Its structures, which were useless to a people of European habits, were speedily destroyed to make room for a city adapted to the wants of a civilized race. We must seek for its characteristics in contemporary Indian houses which still remain in ruins, and in such of the early descriptions as have come down to us, and then leave the subject with but little accurate knowledge. Its situation, partly on dry land and partly in the waters of a shallow artificial pond formed by causeways and dikes, led to the formation of streets and squares, which were unusual in Indian pueblos, and gave to it a remarkable appearance. "There were three sorts of broad and spacious streets," Herrera remarks; "one sort all water with bridges, another all earth, and a third of earth and water, there being a space to walk along on land and the rest for canoes to pass, so that most of the streets had walks on the sides and water in the middle." † Many of the houses were large, far beyond the supposable wants of a single Indian family. They were constructed of adobe brick and of stone, and plastered over in both cases with gypsum, which made them a brilliant white; and some were constructed of a red porous stone. In cutting and dressing this stone flint implements were used. ‡ The fact that the houses were plastered externally leads us to infer that they had not learned to dress stone and lay them in courses. It is not certainly established that they had learned the use of a mortar of lime and sand. In the final attack and capture, it is said that

* *Historia General*, Lib. IV. c. 36.

† *History of Mexico*, II. 361.

‡ *Clavigero*, II. 238.

Cortes, in the course of seventeen days, destroyed and levelled three quarters of the pueblo, which demonstrates the flimsy character of the masonry. Some of the houses were constructed on three sides of a court, like those on the Rio Chaco in New Mexico, others probably surrounded an open court or quadrangle, like the House of the Nuns at Uxmal; but this is not clearly shown. The best houses were usually two stories high, an upper and lower floor being mentioned. The second story receded from the first, probably in the terraced form. Clavigero remarks that "the houses of the lords and people of circumstance were built of stone and lime. They consisted of two floors, having halls, large court-yards, and the chambers fitly disposed; the roofs were flat and terraced; the walls were so well whitened, polished, and shining, that they appeared to the Spaniards when at a distance to have been silver. The pavement or floor was plaster, perfectly level, plain, and smooth. . . . The large houses of the capitol had in general two entrances, the principal one to the street, the other to the canal. They had no wooden doors to their houses."* The house was entered through doorways from the street, or from the court, on the ground-floor. Not a house in Mexico is mentioned by any of the early writers as occupied by a single family. They were evidently joint-tenement houses of the aboriginal American model, each occupied by a number of families ranging from five and ten to one hundred, and perhaps in some cases two hundred families in a house. The largest houses ever constructed in America by the Indians are still to be seen in New Mexico in ruins, one of which, the Pueblo Bonito, contained over six hundred apartments.† The village consisted of a single house constructed on three sides of a court.

Two of the houses in Mexico were more particularly noticed by the soldiers of Cortes than others,—that in which they were quartered, and that in which Montezuma lived. Neither can be said to have been described. I shall confine myself to these two structures.

Cortes made his first entry into Mexico in November, 1519,

* History of Mexico, II. 232.

† Report of Lieutenant, now General J. H. Simpson, U. S. Senate Ex. Doc. No. 54, 31st Congress, 1st Session, 1850.

with four hundred and fifty Spaniards, according to Bernal Diaz,* accompanied by a thousand Tlascalcan allies. They were lodged in a vacant palace of Montezuma's late father, Diaz naïvely remarks, observing that "the whole of this palace was very light, airy, clean, and pleasant, the entry being through a great court."† Cortes, after describing his reception, informs us that Montezuma "returned along the street in the order already described, until he reached a very large and splendid palace in which we were to be quartered. He then took me by the hand and led me into a spacious saloon, in front of which was a court through which we had entered."‡ So much for the statements of two eyewitnesses. Herrera gathered some additional particulars. He states that "they came to a very large court, which was the wardrobe of the idols, and had been the house of Axayacatzin, Montezuma's father. . . . Being lodged in so large a house, that, though it seems incredible, contained so many capacious rooms, with bedchambers, that one hundred and fifty Spaniards could all lie single. It was also worth observing that though the house was so big, every part of it to the last corner was very clean, neat, matted, and hung with hangings of cotton and feather work of several colors, and had beds and mats with pavilions over them. No man of whatsoever quality having any other sort of bed, no other being used." In the tidiness of these rooms we gain some evidence of the character of Aztec women.

Joint-tenement houses, and the mode of life they indicate, were at this time unknown in Europe. They belonged to a more ancient condition of society. It is not surprising, therefore, that the Spaniards, astonished at their magnitude, should have styled them palaces, and having been received with a military array by Montezuma, as the general commander of the Aztec forces, should have regarded him as a king, since monarchical government was the form with which they were chiefly acquainted. Suffice it then to say that one of the great houses of the Aztecs was large enough to accommodate Cortes and his fourteen hundred and fifty men, as they had previously been

* Conquest of Mex. Ed. 1803, Keatinge's Trans., I. 181, 189, Herrera says, 300, II. 327.

† Diaz, I. 191,

‡ Despatches of Cortes, Folsom's Trans. p. 86.

accommodated in one Cholulan house, and elsewhere on the way to Mexico. From New Mexico to the Isthmus of Panama there was scarcely a principal village in which an equal number could not have found accommodations in a single house. When it is found to be unnecessary to call it a palace in order to account for its size, we are led to the conclusion that an ordinary Aztec house was emptied of its inhabitants to make room for their unwelcome visitors. After their reception, Aztec hospitality supplied them with provisions.

We are next to consider the second so-called palace, that in which Montezuma lived, and the dinner of Montezuma which these soldiers witnessed, and which has gone into history as a part of the evidence that a monarchy of the feudal type existed in Mexico. They had but little time to make their observations, for this imaginary kingdom perished almost immediately, and the people in the main dispersed.

On the seventh day after the entry into Mexico, Montezuma was induced by intimidation to leave the house in which he lived and take up his quarters with Cortes, where he was held a prisoner until his death, which occurred a few weeks later.* Whatever was seen of his mode of life in his usual place of residence was practically limited to the five days between the coming of the Spaniards and his capture. Our knowledge of the facts is in the main derived from what these soldiers reported upon slight and imperfect means of observation. Bernal Diaz and Cortes have left us an extraordinary description, not of his residence, but of his daily life, and more particularly of the dinner which has been made the subject of this article. It is worth the attempt to take up the pictures of these and succeeding authors, and see whether the real truth of the matter cannot be elicited from their own statements. There was undoubtedly a basis of facts underneath them, because without such a basis the superstructure could not have been created.

It may with reason be supposed that the Spaniards found Montezuma, with his gentile kindred, in a large joint-tenement house, containing a hundred or more families united in a communal household. The dinner they witnessed was the single daily meal of this household, prepared in a common cook-

* Clavigero's History of Mexico, II. 364.

house from common stores, and divided at the kettle. The dinner of each person was placed in an earthen bowl, with which in his hand an Indian needed neither chair nor table, and, moreover, had neither the one nor the other. The men ate first, and by themselves, Indian fashion; and the women, of whom only a few were seen, afterwards and by themselves. On this hypothesis the dinner in question is susceptible of a satisfactory explanation.

It has been shown that each Aztec community of persons owned lands in common, from which they derived their support. Their mode of tillage and of distribution of the products, whatever it may have been, would have returned to each family or household, large or small, its rightful share. Communism in living in large households composed of related families springs naturally from such a soil. It may be considered a law of their condition, and, plainly enough, the most economical mode of life they could adopt until the idea of property had been sufficiently developed in their minds to lead to the division of lands among individuals with ownership in fee, and power of alienation. Their social system, which tended to unite kindred families in a common household, their ownership of lands in common, and their ownership as a group, of a joint-tenement house, which would necessarily follow, would not admit a right in persons to sell, and thus to introduce strangers into the ownership of such lands or such houses. Lands and houses were owned and held under a common system which entered into their plan of life. The idea of property was forming in their minds, but it was still in that immature state which pertains to the Middle status of barbarism. They had no money, but traded by barter of commodities; very little personal property, and scarcely anything of value to Europeans. They were still a breech-cloth people, wearing this rag of barbarism as the unmistakable evidence of their condition; and the family was in the syndyasmian or pairing form, with separation at any moment at the option of either party. It was the weakness of the family, its inability to face alone the struggle of life, which led to the construction of joint-tenement houses throughout North and South America by the Indian tribes; and it was the gentile organization which

led them to fill these houses, on the principle of kin, with related families.

In a pueblo as large as that of Mexico, which was the largest found in America, and may possibly have contained thirty thousand inhabitants, there must have been a number of large communal houses of different sizes, from those that were called palaces because of their size, to those filled by a few families. Degrees of prosperity are shown in barbarous as well as in civilized life in the quarters of the people. Herrera states that the houses of the poorer sort of people were "small, low, and mean," but that "as small as the houses were, they commonly contained two, four, and six families." * Wherever a household is found in Indian life, be the married pairs composing it few or many, that household practised communism in living. In the largest of these houses it would not follow necessarily that all its inmates lived from common stores, because they might form several household groups in the same house; but in the large household of which Montezuma was a member, it is plain that it was fed from common stores prepared in a common cook-house, and divided from the kettle in earthen bowls, each containing the dinner of a single person. Montezuma was supposed to be absolute master of Mexico, and what they saw at this dinner was interpreted with exclusive reference to him as the central figure. The result is remarkably grotesque. It was their own self-deception, without any assistance from the Aztecs. The accounts given by Diaz and Cortes, and which subsequent writers have built upon with glowing enthusiasm and free additions, is simply the gossip of a camp of soldiers suddenly cast into an earlier form of society, which the Village Indians of America, of all mankind, then best represented. That they could understand it was not to have been expected. Accustomed to monarchy and to privileged classes, the principal Aztec war-chief seemed to them quite naturally a king, and sachems and chiefs followed in their vision as princes and lords. But that they should have remained in history as such for three centuries is an amusing commentary upon the value of historical writings in general.

The so-called palace of Montezuma is not described by Diaz,

* History of America, II. 360.

for the reason, probably, that there was nothing to distinguish it from a number of similar structures in the pueblo. Neither is it described by Cortés or the Anonymous Conqueror; Cortes merely remarking generally that "within the city his palaces were so wonderful that it is hardly possible to describe their beauty and extent; I can only say that in Spain there is nothing equal to them."* Gothic cathedrals were then standing in Spain, the Alhambra in Grenada, and without doubt public and private buildings of dressed stone laid in courses. While the comparison was mendacious, we can understand the desire of the conqueror to magnify his exploits. Herrera, who came later and had additional resources, remarks that the palace in which Montezuma resided "had twenty gates, all of them to the square or market-place, and the principal streets, and three spacious courts, and in one of them a very large fountain. . . . There were many halls one hundred feet in length, and rooms of twenty-five and thirty, and one hundred baths. The timber work was small, without nails, but very fine and strong, which the Spaniards much admired. The walls were of marble, jasper, porphyry, a black sort of stone with red veins like blood, white stone, and another sort that is transparent. The roofs were of wood, well wrought and carved. . . . The rooms were painted and matted, and many of them had rich hangings of cotton and coney wool, or of feather-work. The beds were not answerable to the grandeur of the house and furniture, being poor and wretched, consisting of blankets upon mats or on hay. . . . Few men lie in this palace, but there were one thousand women in it, and some say three thousand, which is reckoned most likely. . . . Montezuma took to himself the ladies that were the daughters of great men, being many in number."†

The external walls of the houses were covered with plaster. From the description it seems probable that in the interior of the large rooms the faces of the stone in the walls were seen here and there, some of the red porous stone, some of marble, and some resembling porphyry, for it is not supposable that they could cut this stone with flint implements. Large stones used on the inner faces of the walls might have been

* Despatches, p. 121.

† History of America, II. 345.

left uncovered, and thus have presented the mottled appearance mentioned. The Aztecs had no structures comparable with those of Yucatan. Their architecture resembles that of New Mexico wherever its features distinctly appear upon evidence that can be trusted. The best rooms found in the latter region are of thin pieces of sandstone prepared by fracture, and laid up with a uniform face, without the use of mortar. Herrera had no occasion to speak of the use of marble and porphyry in the walls of this house in such a vague manner and upon more vague information. The reference to the thousand or more women as forming the harem of Montezuma is a gross libel.

Mr. Hubert H. Bancroft, the last of the long line of writers who have treated the affairs of the Aztecs, has put the finishing touch to this picture in the following language: "The principal palace of the king of Mexico was an irregular pile of low buildings enormous in extent, constructed of huge blocks of *tetzontli*, a kind of porous stone common to that country, cemented with mortar. The arrangement of the buildings was such that they enclosed three great plazas or public squares, in one of which a beautiful fountain incessantly played. Twenty great doors opened on the squares and on the streets, and over these was sculptured in stone the coat-of-arms of the king of Mexico, an eagle gripping in his talons a jaguar. In the interior were many halls, and one in particular is said by a writer who accompanied Cortes, known as the Anonymous Conqueror, to have been of sufficient extent to contain three thousand men. . . . In addition to these were more than one hundred smaller rooms, and the same number of marble baths. . . . The walls and floors of halls and apartments were many of them faced with polished slabs of marble, jasper, obsidian, and white *tecali*; lofty columns of the same fine stones supported marble balconies and porticos, every inch and corner of which was filled with wondrous ornamental carving, or held a grinning, grotesquely sculptured head. The beams and casings were of cedar, cypress, and other valuable woods profusely carved and put together without nails. . . . Superb mats of most exquisite finish were spread upon the marble floors; the tapestry that draped the walls and the curtains that hung be-

fore the windows were made of a fabric most wonderful for its delicate texture, elegant designs, and brilliant colors ; through the halls and corridors a thousand golden censers, in which burned precious spices and perfumes, diffused a subtle odor.”*

Upon this rhapsody it will be sufficient to remark that halls were entirely unknown in Indian architecture. Neither a hall, as that term is used by us, has ever been seen in an Indian house, nor has one been found in the ruins of any Indian structure. An external corridor has occasionally been found in ruins of houses in Central America. Aztec window-curtains of delicate texture, marble baths and porticos, and floors of polished slabs of marble, as figments of a troubled imagination, recall the glowing description of the great kingdom of the Sandwich Islands, with its king, its cabinet ministers, its parliament, its army and navy, which Mark Twain has fitly characterized as “an attempt to navigate a sardine dish with Great Eastern machinery” ; and it suggests also the Indian chief humorously mentioned by Irving as generously “decked out in cocked hat and military coat, in contrast with his breech clout and leathern leggins, being grand officer at top and ragged Indian at bottom.”† Whatever may be said by credulous and enthusiastic authors to decorate this Indian pueblo, its houses, and its breech-cloth people, cannot conceal the “ragged Indian” therein by dressing him in a European costume.

¶ The dinner of Montezuma, witnessed within the five days named by the Spanish soldiers, comes down to us with a slender proportion of reliable facts. The accounts of Bernal Diaz and of Cortes form the basis of all subsequent descriptions.‡ Montezuma was the central figure around whom all the others are made to move. A number of men, as Diaz states, were to be seen in the house and in the courts, going to and fro, a part of whom were thought to be chiefs in attendance upon Montezuma, and the remainder were supposed to be guards. Better proof of the use of guards is needed than the suggestion of Diaz. It implies a knowledge of military discipline unknown by Indian tribes. It was noticed that Indians went barefooted into the presence of Montezuma, which was interpreted as an

* *Native Races of the Pacific States.* Civilized Nations, Vol. II. p. 160.

† Bonneville, p. 34.

‡ The Anonymous Conqueror does not notice it.

act of servility and deference, although bare feet must have been the rule rather than the exception in Tenochtitlan. Diaz further informs us that "his cooks had upwards of thirty different ways of dressing meats, and they had earthen vessels so contrived as to keep them always hot. For the table of Montezuma himself above three hundred dishes were dressed, and for his guards above a thousand. Before dinner Montezuma would go out and inspect the preparations, and his officers would point out to him which were the best, and explain of what birds and flesh they were composed; and of these he would eat. . . . Montezuma was seated on a low throne or chair at a table proportionate to the height of his seat. The table was covered with white cloth and napkins, and four beautiful women presented him with water for his hands in vessels which they called Xicales, with other vessels under them like plates to catch the water; they also presented him with towels. Then two other women brought him small cakes of bread, and when the king began to eat, a large screen of wood-gilt was placed before him, so that people should not during that time see him. The women having retired to a little distance, four ancient lords stood by the throne, to whom Montezuma from time to time spoke or addressed questions, and as a matter of particular favor gave to each of them a plate of that which he was eating. . . . This was served on earthenware of Cholula, red and black. . . . I observed a number of jars, about fifty, brought in filled with foaming chocolate, of which he took some which the women presented to him. During the time Montezuma was at dinner, two very beautiful women were busily employed making small cakes, with eggs and other things mixed therein. These were delicately white, and when made they presented them to him on plates covered with napkins. Also another kind of bread was brought to him in long loaves, and plates of cakes resembling wafers. After he had dined they presented to him three little canes, highly ornamented, containing liquid amber mixed with an herb they call tobacco; and when he had sufficiently viewed the singers, dancers, and buffoons, he took a little of the smoke of one of these canes and then laid himself down to sleep; and thus his principal meal concluded. After this was over, all his guards

and domestics sat down to dinner, and as near as I can judge, above a thousand plates of these eatables that I have mentioned were laid before them, with vessels of foaming chocolate, and fruit in immense quantity. For his women and various inferior servants, his establishment was a prodigious expense, and we were astonished, amid such a profusion, at the vast regularity that prevailed."* Diaz wrote his history more than thirty years after the conquest (he says he was writing it in 1568),† which may serve to excuse him for implying the use of veritable chairs and a table where neither existed, and for describing the remainder as sitting down to dinner. Tezozomoc, who is followed by Herrera, says the table of Montezuma consisted of two skins. How they were fastened together and supported does not appear.

The statements in the Despatches of Cortes, as they now appear, are an improvement upon Diaz, the pitch being on a higher key. He remarks that Montezuma "was served in the following manner: Every day, as soon as it was light, six hundred nobles and men of rank were in attendance at the palace, who either sat or walked about in the halls and galleries, and passed their time in conversation, but without entering the apartment where his person was. The servants and attendants of these nobles remained in the court-yards, of which there were two or three of great extent, and in the adjoining street, which was also very spacious. They all remained in attendance from morning till night; and when his meals were served, the nobles were likewise served with equal profusion, and their servants and secretaries also had their allowance. Daily his larder and wine-cellar were open to all who wished to eat or drink. The meals were served by three or four hundred youths, who brought in an infinite number of dishes; indeed, whenever he dined or supped the table was loaded with every kind of flesh, fish, fruits and vegetables that the country produced. As the climate is cold, they put a chafing-dish with live coals under every plate and dish, to keep them warm. The meals were served in a large hall in which Montezuma was accustomed to eat, and the dishes quite filled

* History of the Conquest of Mexico, I. 198-202.

† Ib. II. 423.

the room, which was covered with mats, and kept very clean. He sat on a small cushion, curiously wrought of leather. During the meal there were present, at a little distance from him, five or six elderly caciques, to whom he presented some of the food. And there was constantly in attendance one of the servants, who arranged and handed the dishes, and who received from others whatever was wanted for the supply of the table. Both at the beginning and end of every meal, they furnished water for the hands; and the napkins used on these occasions were never used a second time, and this was the case also with the plates and dishes, which were not brought again, but new ones in place of them; it was the same with the chafing-dishes." *

Since cursive writing was unknown among the Aztecs, the presence of these secretaries is an amusing feature in the account. The wine-cellar also is remarkable for two reasons: because the level of the streets and courts was but four feet above the level of the water, which made cellars impossible; and because the Aztecs had no knowledge of wine. An acid beer (pulque), made by fermenting the juice of the maguey, was a common beverage of the Aztecs; but it is hardly supposable that even this was used at dinner. It will be noticed that according to this account the dinner was served to all at the same time; Montezuma and several chiefs eating at one end of the room, but no mention is made of the manner in which the remainder ate. The six hundred men (or less) who remained about the house and courts during the day, we may well suppose, were, with their families, joint residents and joint proprietors with Montezuma of the establishment. Two or three structures are mingled in these descriptions, which were probably entirely distinct in their occupations and uses.

Herrera gathered up the subsequent growth of the story, which undoubtedly made a great sensation in Europe as a part of the picture of life in the New World; and embellished it from sheer delight in a marvellous tale. The few facts stated by Bernal Diaz, expressing the interpretation of the Spanish soldiers, were fruitful seeds planted three hundred years ago, which the imaginations of enthusiastic authors have developed

* Despatches of Cortes, pp. 123.

into a glowing and picturesque narrative. The principal part of Herrera's account runs as follows: "Montezuma did always eat alone, and so great a quantity of meat was served up to his table, such great variety, and so richly dressed, that there was sufficient for all the prime men of his household. His table was a cushion, or two pieces of colored leather; instead of a chair, a little low stool, made of one piece, the seat hollowed out, carved and painted in the best manner that could be; the table-cloth, napkins, and towels of very fine cotton as white as snow, and never served any more than once, being the fees of the proper officers. The meat was brought in by four hundred pages, all gentlemen, sons of lords, and set down together in a hall; the king went thither, and with a rod, or his hand, pointed to what he liked, and then the sewer set it upon the chafing-dishes that it might not be cold; and this he never failed to do, unless the stewards at any time very much recommended to him some particular dishes. Before he sat down, twenty of the most beautiful women came and brought him water to wash his hands, and when seated the sewer did shut a wooded rail that divided the room, lest the nobility that went to see him dine should encumber the table, and he alone set on and took off the dishes, for the pages neither came near nor spoke a word. Strict silence was observed, none daring to speak unless it was some jester, or the person of whom he asked a question. The sewer was always upon his knees and barefooted, attending him without lifting up his eyes. No man with shoes on was to come into the room upon pain of death. The sewer also gave him drink in a cup of several shapes, sometimes of gold, and sometimes of silver, sometimes of gourd, and sometimes of the shells of fishes.* Six ancient lords attended at a distance, to whom he gave some dishes of what he liked best, which they did eat there with much respect. He had always music of flutes, reeds, horns, shells, kettle-drums, and other instruments, nothing agreeable to the ears of Spaniards. . . . There were

* Solis, thinking a cocoanut shell altogether too plain, embellishes the shell with jewels: "He had cups of gold, and salvers of the same; and sometimes he drank out of cocoas and natural shells very richly set with jewels." — *History of the Conquest of Mexico*, Lond., ed. 1738, Townshend's Trans., I. 417.

always at dinner dwarfs, crooked and other deformed persons, to provoke laughter, and they did eat of what was left at the further end of the hall, with the jesters and buffoons. What remained was given to three thousand Indians, that were constantly upon guard in the courts and squares, and therefore there were always three thousand dishes of meat and as many cups of liquor; the larder and cellar were never shut, by reason of their continual carrying in and out. In the kitchen they dressed all sorts of meat that were sold in the market, being a prodigious quantity, besides what was brought in by hunters, tenants, and tributaries. The dishes and all utensils were all of good earthenware, and served the king but once. He had abundance of vessels of gold and silver, yet made no use of them, because they should not serve twice.”*

Further on, and out of its place, Herrera gives us what seems to have been a call of the scattered household to dinner. “When it was dinner-time,” he remarks, “eight or ten men whistled very loud, beating the kettle-drums hard, as it were to warn those that were to dance after dinner; then the dancers came, who, to entertain their great sovereign, were all to be men of quality, clad as richly as they could, with costly mantles, white, red, green, yellow, and some of several colors.”†

The four women of Diaz who brought water to Montezuma have now increased to twenty; but, as the Spanish writers claimed a wide latitude in the matter of numbers, fivefold is not, perhaps, unreasonable, especially as it did not occur to Herrera that Diaz may, at the outset, have quadrupled the actual number. The “three or four hundred youths” who brought in the dinner, according to Cortes, settle down under Herrera to “four hundred pages, all gentlemen, sons of lords”; and here we must recognize the discrimination of the historian, in that he found the highest number stated by Cortes fully adequate to the occasion. Two other things may be noticed: shoes have disappeared from all Indian feet in the face of a terrific penalty; and three thousand hungry Indians stand in peaceful quietude, while their dinner grows cold upon the floor, as Montezuma eats alone in solitary grandeur. No American Indian could be

* History of America, II. 336.

† Ib. 443.

made to comprehend this picture. It lacks the realism of Indian life, and embodies an amount of puerility of which the Indian nature is not susceptible. Europeans and Americans may rise to the height of the occasion because their mental range is wider, and their imaginations have fed more deeply upon nursery-tales. Diaz had contented himself with saying that Montezuma "had two hundred of his nobility on guard in apartments adjoining his own,"* in whom may be recognized his fellow-householders; but Cortes generously increased the number to "six hundred nobles and men of rank," who appeared at daylight and remained in attendance during the day. Neither number, however, was quite sufficient to meet the conceptions of the historiographer of Spain, and accordingly three thousand, all guards, were adopted by Herrera as a suitable number to give *éclat* to Montezuma's dinner. Diaz, however, states that "a thousand plates of those eatables" were set before the guards and domestics. If any man, conversant with Indian character, could show by what instrumentality five hundred Indians could be kept together twelve hours in attendance upon any human being, from a sense of duty, he would add something to our knowledge of the Red Race; and could he prove further that they had actually waited, in the presence of as many earthen bowls, smoking with their several dinners, while their war-chief in the same room was making his repast alone, the verifier would thereby endow the Indian character with an element of forbearance he has never since been known to display. The block of wood hollowed out for a stool or seat may be accepted, for it savors of the simplicity of Indian art. That the Aztecs had napkins of coarse texture, woven by hand, is probable; as also that they were white, because cotton is white. Imagination might easily expand a napkin into a table-cloth, provided a table existed to spread it upon; but in this case, without duly considering the relation between the two, the table-cloth has been created, but the table refuses to appear. The napkin business, therefore, seems to have been slightly overdone. Finally, the call of the scattered household to dinner by kettle-drums and whistling savors too strongly of Indian ways and usages to be diverted into a summons to the dancers, as Herrera suggests. This Aztec dinner-

* History of the Conquest of Mexico, I. 198.

call, on a scale commensurate with a large communal household, would have been lost to history but for the special use discerned in it to decorate a tale. It recognizes the loitering habits of an Aztec household, and perhaps the irregularity of the dinner-hour.

Passing over the descriptions of Sahagun, Clavigero, and Prescott, who have kindled into enthusiasm over this dinner of Montezuma, Mr. Hubert H. Bancroft shall be allowed to furnish us with the very latest version. "Every day," he remarks, "from sunrise until sunset the antechambers of Montezuma's palace in Mexico were occupied by six hundred noblemen and gentlemen, who passed their time lounging about and discussing the gossip of the day in low tones, for it was considered disrespectful to speak loudly or make any noise within the palace limits. They were provided with apartments in the palace, and took their meals from what remained of the superabundance of the royal table, as did after them their own servants, of whom each person of quality was entitled to from one to thirty according to his rank. These retainers, numbering two or three thousand, filled several outer courts during the day. The king took his meals alone in one of the largest halls of the palace. . . . He was seated upon a low leather cushion, upon which were thrown various soft skins, and his table was of a similar description, except that it was larger and rather higher, and was covered with white cotton cloths of the finest texture. The dinner-service was of the finest ware of Cholula, and many of the goblets were of gold and silver, or fashioned with beautiful shells. He is said to have possessed a complete service of solid gold, but as it was considered below a king's dignity to use anything at table twice, Montezuma, with all his extravagance, was obliged to keep this costly dinner-set in the temple. The bill of fare comprised everything edible of fish, flesh, and fowl, that could be procured in the empire or imported beyond it. Relays of couriers were employed in bringing delicacies from afar. . . . There were cunning cooks among the Aztecs, and at these extravagant meals there was almost as much variety in the cookery as in the matter cooked. Sahagun gives a most formidable list of roast, stewed, and broiled dishes, of meat, fish, and poultry, seasoned with many kinds of herbs, of which,

however, that most frequently mentioned is chile. He further describes many kinds of bread, all bearing a more or less close resemblance to the Mexican tortilla, . . . then tamales of all kinds, and many other curious messes, such as frog spawn and stewed ants, cooked with chile. . . . Each dish was kept warm on a chafing-dish placed under it. Writers do not agree as to the exact quantity of food served up at each meal, but it must have been immense, since the lowest number of dishes given is three hundred, and the highest three thousand. They were brought into the hall by four hundred pages of noble birth, who placed their burdens upon the matted floor and retired noiselessly. The king then pointed out such viands as he wished to partake of, or left the selection to his steward, who doubtless took pains to study the likes and dislikes of the royal palate. The steward was a functionary of the highest rank and importance; he alone was privileged to place the designated delicacies before the king upon the table; he appears to have done duty both as royal carver and cup-bearer;* and, according to Torquemada, to have done it barefooted and on his knees. Everything being in readiness, a number of the most beautiful of the king's women entered, bearing water in round vessels called Xicales, for the king to wash his hands in, and towels that he might dry them, other vessels being placed upon the ground to catch the drippings. Two other women, at the same time, brought him some small loaves of a very delicate kind of bread, made of the finest maize flour, beaten up with eggs. This done, a wooden screen, carved and gilt, was placed before him that no one might see him while eating. There were always present five or six aged lords, who stood near the royal chair barefooted and with bowed heads. To these, as a special mark of favor, the king occasionally sent a choice morsel from his own plate. During the meal the monarch amused himself by watching the performances of his jugglers and tumblers, whose marvellous feats of strength and dexterity I shall describe in another place; at other times there was dancing accompanied by singing and music. . . . The more solid food was followed by pastry, sweetmeats, and a magnificent dessert of fruit. The only beverage drank was chocolate, of which about fifty jars

* The "cup-bearer" agrees reasonably well with the "window-curtains."

were provided ; it was taken with a spoon, finely wrought of gold or shell, from a goblet of the same material. Having finished his dinner, the king again washed his hands in water brought to him, as before, by the women. After this, several painted and gilt pipes were brought, from which he inhaled, through his mouth or nose, as best suited him, the smoke of a mixture of liquid amber and an herb called tobacco. This siesta over, he devoted himself to business, and proceeded to give audience to foreign ambassadors or deputations from cities in the empire, and to such of his lords and ministers as had business to transact with him." *

In this account, although founded upon those of Diaz and Cortes, and showing nothing essentially new, we have the final growth of the story to the present time, but without any assurance that the limits of its possible expansion have been reached. The purification of our aboriginal history, by casting out the mass of trash with which it is so deeply freighted, is forced upon us to save American intelligence from deserved disgrace. Whatever may be said of the American aborigines in general, or of the Aztecs in particular, they were endowed with common sense in the matter of their daily food, which cost them labor, forethought, and care to provide. The picture of Indian life here presented is simply impossible. Village Indians in the Middle status of barbarism were below the age of tables and chairs for dinner service ; neither had they learned to arrange a dinner to be eaten socially at a common-table, or even to share their dinner with their wives and children. Their joint-tenement houses, their common stores, their communism in living, and the separation of the sexes at their meals, are genuine Indian customs and usages which explain this dinner. It was misconceived by the Spaniards quite naturally, and with the grotesque results herein presented ; but there is no excuse for continuing this misconception in the presence of known facts accessible to all.

There is no doubt whatever that Montezuma was treated with great consideration by all classes of persons. Indians respect and venerate their chiefs. As their principal war-chief Montezuma held the highest official position among them. He

* Native Races of the Pacific States, II, 174 - 178.

is represented as amiable, generous, and manly, although unnerved by the sudden appearance and novel and deadly arms of the Spaniards. He had charge of the reception and entertainment of Cortes and his men, who requited him savagely for his hospitality and kindness. But when his home-life is considered, he fared no better than his fellow-householders, sharing with them their common dinner. These accounts, when divested of their misconceptions, render it probable that Montezuma was living with his gentile kinsmen in a house they owned in common; and that what the Spaniards saw was a dinner in common by this household which, with the women and children, may have numbered from five hundred to a thousand persons. When the scattered members of the household had been summoned, the single daily meal was brought in by a number of persons from the common cook-house in earthen bowls and dishes, and set down upon the floor of an apartment used as a place for dinner in the fashion of Indians. Indians as they were, they doubtless took up these bowls one by one, each containing the dinner of one person divided at the kettle. They ate standing, or it may be sitting upon the floor, or upon the ground in the open court. Indians as they were, the men ate first and by themselves, and the women and children afterwards. After dinner was over, they were diverted, probably, with music and dancing, and made themselves merry, as well-fed Indians are apt to do. That the same dinner, conducted in a similar manner, occurred at all the houses in the pueblo, large and small, once a day, there can scarcely be a doubt.

The dinner of Montezuma which has gone into history, and been read for three centuries with wonder and admiration, is an excellent illustration of the slender material out of which American aboriginal history has been made. It shows, moreover, as a warning, what results flow from great misconceptions through the constructive faculty of authors.

A confederacy of three Indian tribes, speaking dialects of the same language, was precisely what the Spaniards found in Mexico, and this was all they found. They had no occasion in their accounts to advance a step beyond this simple fact. A satisfactory explanation of this confederacy can be found in

similar Indian confederacies. It was a growth from the common institutions of the Indian family. Underneath these delusive pictures a council of chiefs is revealed, which was the natural and legitimate instrument of government under Indian institutions. No other form of government was possible among them. They had, beside, which was an equally legitimate part of this system, an elective and deposable war-chief (Teuchtli), the power to elect and to depose being held by a fixed constituency ever present, and ready to act when occasion required. The Aztec organization stood plainly before the Spaniards as a confederacy of Indian tribes. Nothing but the grossest perversion of obvious facts could have enabled Spanish writers to fabricate the Aztec monarchy out of a democratic organization.

Without ascertaining the unit of their social system, if organized in gentes, as they probably were, and without gaining any knowledge of the organization that did exist, they boldly invented for the Aztecs a monarchy, with high feudal characteristics, out of the reception of Cortes by their principal war-chief, and such other flimsy materials as Montezuma's dinner. This misconception has stood, through American indolence, quite as long as it deserves to stand.

When we have learned to speak of the American Indians in language adapted to Indian life and Indian institutions, they will become comprehensible. So long as we apply to their social organizations and domestic institutions terms adapted to the organizations and to the institutions of civilized society, we caricature the Indians and deceive ourselves. There was neither a political society, nor a state, nor any civilization in America when it was discovered; and, excluding the Eskimos, but one race of Indians, the Red Race.

LEWIS H. MORGAN.

ART. III.—THE CONSULAR SYSTEM OF THE UNITED STATES.

FOR more than sixty years after the organization of the government of the United States, the consular system received very little attention from Congress. Acts were early passed defining the duties of consuls and granting them the necessary powers for the transaction of their business. The appointment of consuls was left to the discretion of the President, unguided and unhampered by legislation, under the general power conferred by the Constitution on him "by and with the advice and consent of the Senate" to "appoint ambassadors, other public ministers and consuls." The only consuls for the payment of salaries to whom provision was made by law during the first thirty or forty years of the Republic, were those in the Barbary States, on the north coast of Africa, and this provision was made for reasons connected with our political relations with those piratical powers. Such other consuls as the President saw fit, with the advice and consent of the Senate, to appoint, to reside at whatever place in the world was expressed in the commission, received no salaries, and were paid, if paid at all, for their own services, by commissions or fees, although some small allowances from the treasury were made for expenses. Long after the establishment of salaries for consuls in the Barbary States, provision was made by law for the payment of a moderate salary to the consul at London, and this officer was for a long series of years the only salaried consul of the United States resident in any wholly civilized country. Under this system, it is impossible to deny that there were many consuls, foreign subjects as well as native citizens, who gave excellent service to the United States without compensation. But it is equally true that, especially during the latter part of the period of which we are speaking, to wit, the first sixty years of the government under the Constitution, the meagreness of the emolument at the vast majority of posts caused the office of consul to fall in many instances into the hands of unworthy persons. Meanwhile there grew to be a few places where the consular fees amounted to a large sum, and these of course were the chosen

berths of Presidential favorites; not always so worthily bestowed as when President Pierce, in 1853, appointed Nathaniel Hawthorne to be consul at Liverpool, where the fees, then belonging to the consul, were believed to amount to at least \$20,000 annually. The fees returned to the treasury by the consul at that port in 1873 were \$37,530.

As lately as that same year 1853, according to the report then made by the fifth auditor of the treasury, who is charged with the oversight of consular accounts, there were but ten posts where consuls of the United States received salaries, namely, London; the three posts in the Barbary States; that at Alexandria in Egypt (then recently established); two others at Beirut and Smyrna, in the Turkish dominions; and three in China. There were two hundred and fourteen other consuls and commercial agents in the different quarters of the world without salaries, making two hundred and twenty-four persons in the service.

It was not until 1855 that Congress made an attempt to reduce the consular service to a somewhat symmetrical system. A comprehensive act was passed that year, which, however, it was found necessary to repeal, revise, and re-enact in a modified form the next year. It was the aim of this measure, both before and after the revision, to provide fixed salaries for the consuls at all important posts, and to require the return to the treasury of the fees collected at such places. Only the consuls at places where the fees were inconsiderable were to be compensated by the fees. This revised act of 18th August, 1856, has been the basis of the system for the last nineteen years. But gross anomalies, as might have been anticipated, grew up under it. In process of time (partly owing to changes in the laws which will presently be explained) large amounts of fees were collected at places where the amount had formerly been inconsiderable. Instead of promptly withdrawing these places from the schedule of consulates compensated by fees, Congress strove to cope with the difficulty by enactments limiting the amount of fees to be retained by any consul. Meanwhile the authorized allowances for expenses that were obviously necessary were excessively meagre; so that an honest administration of the service was beset with difficulties.

Within the last few years, however, under a more watchful supervision by the State Department of the working of the consular service, several important improvements in the system have been brought about by the legislation of Congress, culminating in the year 1874, and the occasion is favorable for a general survey of the establishment, as provided for by existing laws. We are the more inclined to this duty, because at the present session of Congress, the House of Representatives, in the debates upon the bill providing for the diplomatic and consular service for the next financial year (beginning July 1, 1876), and in the passage of the bill in that branch with reduced appropriations under several heads, has manifested a disposition to cancel and undo some of the good work which had been effected by the legislation of the preceding two or three years. The reader will understand that we are confining ourselves to the *consular* as distinguished from the *diplomatic* service. We make this distinction, because the two services are essentially different. They are alike in the circumstances that both require the employment of public officers in foreign countries, and both relate to the protection of the interests of the nation and its citizens abroad; but in other respects they have little in common. The attack in the House of Representatives last February was more vigorous upon the diplomatic salaries and appropriations than on those attached to the consular service. The latter, nevertheless, were not spared; although, as the figures we shall adduce will show, the basis on which the system had been established by previous legislation yields a handsome surplus of fees collected by consuls, and by them actually paid into the treasury, over and above its whole cost to the government.

The consular system of the United States as thus established contemplates the employment at fixed salaries, for the payment of which provision is made in the annual appropriation acts passed by Congress, of seventeen consuls-general and one hundred and sixty-eight consuls. In this enumeration are included among the consuls-general the officer in Egypt, whose official title is "agent and consul-general," and the officer at Constantinople, who is "secretary of legation and consul-general," but not the officers in Hayti and Liberia, each

of whom bears the official title of "minister-resident and consul-general," and who are considered as belonging to the diplomatic service. The schedule of consuls includes some places where the actual title of the officer is "commercial agent." The duties of a commercial agent are precisely the same as those of a consul, the only difference in the office being this, that a consul requires, besides the appointment from his own government, an *exequatur* or instrument acknowledging his official position from the government to which he is accredited, while a commercial agent requires no *exequatur*. The law as it now stands in the Revised Statutes, derived from the act of 1856 (the act of 1855 having been conspicuously imperfect in this respect), is careful, in express terms, not to attempt to fix the grade of the officer whom the President may appoint at any place. Congress holds the purse-strings and makes the appropriations for the salaries; but if the President sees fit to appoint a consul in lieu of a commercial agent at any place, or *vice versa*, or a consul-general instead of a consul or commercial agent, the salary attached to the post is available for the compensation of the officer thus appointed. The President, moreover, with the advice and consent of the Senate, may appoint a consul-general or consul to serve without a salary at any other place.

The schedule of salaries established by law for consuls-general and consuls, but applying as we have said also to six commercial agents, is the following:—

SCHEDULE OF CONSULAR SALARIES ESTABLISHED BY THE ACT OF CONGRESS OF JUNE 11, 1874.

Consuls-General.

4 (London, Paris, Havana, and Rio Janeiro),	at \$ 6,000	\$ 24,000
2 (Calcutta and Shanghai), ...	" 5,000	10,000
1 (Melbourne), ...	" 4,500	4,500
3 (Berlin, Kanagawa, and Montreal), ...	" 4,000	12,000
1 (agent and consul-general at Cairo, Egypt),	" 4,000	4,000
4 (Constantinople, Frankfort, Rome and Vienna),	" 3,000	12,000
2 (Mexico and St. Petersburg), ...	" 2,000	4,000
17		\$ 70,500

Consuls.

1 (Liverpool), ...	at \$ 6,000	\$ 6,000
2 called consulates of the first class, ...	" 4,000	8,000
9 called consulates of the second class, ...	" 3,500	31,500
17 called consulates of the third class (including one commercial agency)	" 3,000	51,000
17 called consulates of the fourth class, ...	" 2,500	42,500
38 called consulates of the fifth class, ...	" 2,000	76,000
56 called consulates of the sixth class, ...	" 1,500	84,000
28 called consulates of the seventh class (including five commercial agencies), ...	" 1,000	28,000
168, that is, 162 consuls, 6 commercial agents, ...		\$ 327,000

All of these officers receiving salaries, with the exception of those in class seven and also those at four small commercial agencies, are prohibited from engaging in trade.

The changes proposed in the bill which passed the House of Representatives involve a very general reduction of the salaries thus stated: the abolition of the first and second classes of the established scheme, changes in the classes, and the withdrawal of this mode of compensation from about forty consulates; the effect of the whole being to reduce the appropriation by about \$100,000.

The statute authorizes the appointment by the President of thirteen "consular clerks," who receive salaries of \$1,000 each per annum from the time of their appointment until they have been in service continuously for five years, and thereafter \$1,200 per annum. It was originally proposed to call these officers "consular pupils," after the *élèves consuls* known in the service of continental countries; we mention this circumstance because it aids to distinguish them from the "office clerks" employed, appointed and paid by such consuls as enjoy an allowance for clerk hire. The provision for consular pupils to be appointed by the President to the number of twenty-five, was originally made in a section of the fundamental act of 1856, of which we have already spoken; but this section was repealed within six months after the passage of the act, before any appointments had been made. It was revived in an act passed in 1864, still in force, and re-enacted in the Revised Statutes, the name of the officers being changed to "consular

clerks," and the number being reduced to thirteen. We have heard it said that more than one hundred applications for appointment to this position were on file, awaiting the executive approval of the act of 1864; but Mr. Seward was ready for them, with a sufficiently severe schedule for the examination, which the law expressly required; and upon sight of this schedule nearly all the applicants withdrew. At any rate, only two were appointed in that year (1864) and no more during the next year. In the course of the year 1866 the authorized number of thirteen was filled up; but that the appointments have been made with sparing hand, and that no resignations have been forced, is proved by the fact that no more than thirty-two appointments in all have been made in the eleven years that the system has been in operation. These consular clerks, after a limited period of service in the Department of State at Washington, where they acquire an experience of great value to them afterwards, are assigned for duty at the consulates at which, in the opinion of the Secretary of State, they will prove most useful; and from time to time their positions are changed. The statute expressly provides that no consular clerk shall be removed from office, except for cause stated in writing and submitted to Congress; and in fact no vacancies have occurred, except by death or voluntary resignation. Several of them have been appointed to be consuls as occasion has arisen, and two at least have arrived at the rank of consul-general.

The excellent provision of law, authorizing the salary of these consular clerks to be increased to \$1,200 after five years' continuous service, took effect in July last, when it was applicable to two only of the number; but, if we mistake not, it becomes applicable to three more in the course of the present year. We may therefore compute the annual expense of the salaries of this class of officers as follows:—

Eight consular clerks at	\$1,000	\$8,000
Five " " 	1,200	6,000
		<u>\$14,000</u>

We have, then, as the aggregate expense of salaries allowed to consuls-general, consuls, commercial agents, and consular clerks, the following:—

17 consuls-general, ...	\$ 70,500
168 consuls (including six commercial agents) ,	327,000
13 consular clerks, ...	14,000
	\$ 411,500

There are also about fifty-nine consuls and fourteen commercial agents who receive no salaries, but are allowed to retain the fees received by them. We have already remarked that heretofore there were sometimes posts of this class where the amount of fees received has been considerable, yielding in fact, in a few cases, a larger remuneration to the consul than the average of the fixed salaries. But this is no longer the case; under the existing revision of the laws, a salary is attached to nearly all posts where the fees exceed trifling amounts, and the provision of law remains in force which requires the return to the treasury by consuls thus compensated of the surplus of fees, if any, above \$ 2,500, together with the sums expended, with the approval of the Secretary of State, for office rent and clerk hire; so that no consul paid by fees can have a personal compensation exceeding \$ 2,500. But very few of them enjoy a compensation approaching that sum, or exceeding a few hundred dollars.

“Vice consul-general” and “deputy consul-general” are uncouth expressions that have been permitted to creep into the nomenclature of our service, unknown to that of other countries. In any system of regular gradation, the prefix “vice” indicates a rank below, and the suffix “general” indicates a rank above, that of “consul” to which they are attached. By combining the whole in one expression, however, it would seem that an effect is produced gratifying to the feelings of somebody. The officers enjoying these titles do not differ from simple vice-consuls and deputy-consuls, except that they serve at posts where the principal officer is a consul-general. It is contrary to our system to have a consul-general and a consul in service at the same time at the same post.

Vice-consuls and deputy-consuls, whether with or without the suffix of “general,” receive no salary or other emolument from the government, but are compensated, if at all, out of the salary of the principal officer to whom they are respectively subordinate, according to such agreement as may be made be-

tween him and them. The number of these officers should be about the same as the number of consuls-general and consuls, that is to say, two hundred and forty, as it is expected that there should be one at every consulate, to act in case of a vacancy, however temporary; but, in point of fact, the number is rather less, not exceeding, we believe, at the present time, two hundred and two. The deficiency is owing, no doubt, to the difficulty experienced at many posts of finding a suitable person to be invested with the responsibilities of the position and able to give the bond required by law. The technical distinction between a "vice-consul" and a "deputy-consul" is this, that the former is to act in the absences of the consul, or after his death or resignation, while a "deputy" may assist in the performance of the business of the office, even when the consul is present at his post. Sometimes both offices are held by the same person, and it rarely happens that separate appointments to both are made for the same post. Practically, at many posts, vice-consuls act as deputy-consuls. This being so, the distinction seems hardly worth preserving. All of these officers are appointed by the Secretary of State on the nomination of the consul-general or consul, under the power which the Constitution gives to Congress to "vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments." These remarks with reference to vice-consuls apply to "vice commercial agents," of whom there are about seventeen in service.

The post of vice-consul, however, derives an importance from the circumstance that when a vice-consul is in full charge of a consulate, he is entitled by law to receive the whole, or such part as the President may prescribe, of the compensation established for a consul at that post; and the usage has been to allow the whole. But as the vice-consuls very frequently are not citizens of the United States, they were, by another provision of law, until recently, prohibited from receiving any salary; or to state the fact more exactly, the officers of the treasury were prohibited from paying them. This system worked unequally, for some of them were able to conceal the fact of their non-citizenship, and the unfairness was so palpable of accepting a

man's service to the extent of allowing him to act for the country, often during a considerable interval of time, and yet denying him any pay for the service thus rendered and accepted, that their accounts sometimes passed if the fact of non-citizenship did not appear on the face of the papers. The anomaly has now been set at rest, by a special enactment that "any vice-consul, who may be temporarily acting as consul during the absence of such consul, may receive compensation, notwithstanding that he is not a citizen of the United States." It would of course be desirable, if suitable persons could be found to accept such appointments, to have a vice-consul who is a citizen attached to every consulate; but this will obviously be impossible at the great majority of posts, until the government shall be prepared to establish a scheme of salaries for such officers. At the same time, in a service of at least two hundred and forty persons, it is clear that the chances of mortality will occasion five or six vacancies every year by reason of death. Upon the death of the consul, his effects, including the seal of the consulate, which, with a supply of blank official forms, may become a dangerous utensil in dishonest or mischievous hands, must fall into the hands of *somebody*; to say nothing of the archives and records of the consulate. In these days of open and frank dealing in matters of diplomacy, these things may be of little intrinsic value, but they certainly ought to be cared for. It is important that there should be on the spot a vice-consul, already known and recognized as such (whether formally or informally) by the local authority, prepared to take charge of the consulate without a moment's delay, to communicate with the Department of State, and to perform, at least such of the duties of the consul as may be within his competence, and necessary for the convenience of merchants, ship-masters, and travellers. The minimum interval before a vacancy can be filled and the new consul can arrive at his post will of course vary with its remoteness; and it happens that the more distant places are generally those at which the presence of an authorized and recognized *gérant*, in such cases, is most important. In point of fact, the interval, not unfrequently, extends over several months. A vice-consul, rendering as far as he is able the full service of a consul in

such cases, of course should be compensated even if not a citizen, and this the law now allows. With this provision of law, the greatest pains should be taken to complete the list of appointments of vice-consuls, so that there should be one at every consulate; and in no case should compensation be allowed or subsequent recognition given to any person assuming to act as consul in cases of vacancy without a previous appointment as vice-consul from the Department.

Indeed, so important is this matter, that it would be advisable to supplement the present provisions by a standing instruction from the Department, or, if need be, by a law, requiring every consul, who for any reason has not the assistance of a vice-consul, to name in writing some proper person (the consul of a friendly power would generally be the most suitable), into whose possession, in the event of his own death, should at once pass the archives of his consulate, and especially his consular seal. The assent of such person having been obtained, and also that of this government, if the person selected were a colleague, his name should be communicated to the local authorities, as also, of course, to the Department, and to the minister of the United States in the country. Nobody can tell where death's dart will strike; but experience as well as the law of mortality teaches us that it will strike down several members of the consular service in every year. Consuls, as a rule, are not permitted to issue passports; but the rule has exceptions; so that a passport purporting to have issued from a consulate is not *prima facie* fraudulent. Many of the older consulates are plentifully provided with official blanks for passports with the eagle "as large as life," printed from an official plate, in the name of the "consulate of the United States of America, at —," a blank anybody can fill. Although the workers in these arts are already tolerably well supplied with forms, it would be a prudent step to require the return of the greater part of these blanks to the Department, or their transport to some suitable place where they could be destroyed. At any rate, reasonable precautions should be taken for security that no more of them are stolen or pass into improper hands.

The description of the various grades in the consular service proper is completed by the mention of the "consular

agents," of whom there are about three hundred and forty-seven. These officers are appointed by the Secretary of State on the nomination of consuls or commercial agents, to render official service in consular matters at such places within the jurisdiction of the consulate or commercial agency as furnish sufficient business to justify the appointment. Like vice-consuls, they receive no compensation from the government, but (subject to such arrangement as they may make with the consul or commercial agent on whose nomination they are appointed) they may retain the fees they receive up to the amount of \$1,000. The arrangement usually made is to divide equally, so that a consular agent rarely enjoys more than \$500 of emoluments, and the great majority receive very much less, even at places where there is commercial business. In some countries there is nothing of the fee-paying kind for consular agents to do, and they are really employed for the convenience of travellers, finding their compensation in the gratification they may experience in serving the Stars and Stripes. By an express provision of law, they receive no allowance, except for stationery and postage on official letters. Even the flags and arms of the United States, if they choose to display them, must be provided at their own expense. Although a great part of the consulates are without subordinate agencies, some of them have several.

In the case of a new appointment to a consulate-general, consulate, or commercial agency, the powers and functions of all the vices and deputies and consular agents at that post cease and determine ninety days after the day when the new chief enters upon the duties of his office, unless the nomination of the subordinate is meanwhile renewed by the new superior. This is rather a hard rule viewed from the point of view of the subordinates, every one of whom holds a certificate of appointment under the hand of the Secretary of State and the seal of the Department, — an appointment which the new consul has power to vacate, either by the mere act of nominating some other person, or by passively allowing it to expire for want of renewal. But it is probably a necessary incident of the existing system, although perhaps something might be done to render its operation less painful by express-

ing more distinctly the tenure of office in the certificate of appointment first issued, or by notifying the change in a letter from the Department. A man who holds a public office, however humble, is apt to think that his appointment ought not to be withdrawn under any warrant less formal than that under which it was conferred; and he is not the less apt to believe this because his whole service has been rendered gratuitously, or when he has incurred expenses in its discharge, for which the government has not reimbursed him.

The fees allowed to be retained by the unsalaried consuls, and to a certain extent by consular agents, amount to an inconsiderable sum in proportion to the whole amount of fees collected by consuls; and it must be understood that, with these comparatively unimportant exceptions, every cent of the fees collected by consuls is returned to the treasury of the United States. No consul who has a salary gains any addition thereto by reason of the fees he collects, however large the amount. The revenue thus collected by consuls amounts to a very considerable sum, and under the more efficient administration of the service in recent years has become an important element in the miscellaneous receipts of the government. This will be evident to the reader when he is made aware that the amount of fees returned by the consuls during 1860, the last calendar year completed within President Buchanan's administration, was \$99,113, which was about the average of those times. In the settlement of the accounts of consuls at the office of the fifth auditor of the treasury, year by year for a long series of years, the fees received were insufficient to cover the salaries, showing an annual deficit to be met by payments from the treasury, and this state of things continued until the year 1866.

In the year 1861, of which ten months were in President Lincoln's administration, the amount of fees returned fell as low as \$77,590, many of the consuls of the old *régime* deeming it beneath their dignity to pay anything to the new administration. At this time a change was made in the year covered by the fifth auditor's report. For the first half of the year 1862, fees amounting to \$47,781 were received from consuls; and for the next complete fiscal year, ending June 30, 1863,

the amount was \$ 152,982, — already a gain of more than one half from the average of the preceding administration, with no change in the laws affecting the matter.

On the 3d of March, 1863, Congress passed a law which took effect on the 1st of July in that year, providing that the invoices of all goods shipped to the United States from foreign countries must be exhibited in triplicate to a consular officer of the United States, who affixes a certificate under the consular seal to each of the triplicates. One of these he returns to the shipper, one he sends to the collector of the customs of the port in the United States where it is proposed to make entry of the goods, and the third he keeps on file, in order to be able to furnish a certified copy in case of the loss of either of the others. The design of this system “to prevent frauds upon the revenue” was declared in the title of the act, and it was very cleverly framed to effect its purpose. An incident or sequel of its passage, perhaps not wholly foreseen by its authors, was to vastly augment the functions of consuls, and to change the relative importance of different consulates. The place of “shipment” is defined to be the place where the goods have been manufactured, finished, or prepared for exportation, or where the journey to the United States begins; not necessarily, nor generally, the place they are actually put on board ship. The idea that the most important consulates are those at important seaports, and that consuls are officers having to do chiefly with ships and sailors, has been incorrect from the date of the passage of this act. The great business of our consuls, nowadays, taken as a whole, is attending to these invoices. The falling off in our shipping, due to the increased rates of insurance caused by the depredations of the Alabama, aggravated the effect. Many inland places became more important consulates than large seaports; many obscure towns proved to be centres of important business. New consulates were established, or new consular agencies to be attached to consulates already existing, for the convenience of shippers. Hence arose the anomalies and inequalities in the matter of compensation to which we have already alluded, and which it has been the aim of recent legislation to remove.

For the whole service of the verification of each invoice,

including the certificates and seals for each of the three triplicates, the fee established by law was two dollars and a half, payable in gold or its equivalent. The fee is the same whether for a small exportation or a large one. A sailor on board a fruit ship from a Mediterranean port pays the same fee for a few boxes of figs which the captain allows him space to bring as a private "adventure," that the owners pay for the whole cargo included in one invoice to them. This is an inequality; and it might be well to exempt invoices of petty amounts from payment of the fee. The raising of revenue of course was not any principal purpose of the act. As a tax on commerce, indeed, the fee is objectionable; but in practice, the triplicate-invoice act does not appear to have operated disadvantageously on the whole, and it is generally regarded as an important part of the mechanism of the existing customs revenue system.

At all events, the act has operated to augment very considerably the amount of fees collected and returned by consuls. Without means to make an exact statement, it is probably fair to assume that two thirds of the fees collected are derived from invoices. The subjoined table shows the amount of fees collected by consuls and paid into the treasury for the years stated:—

FEES PAID INTO THE TREASURY BY CONSULS.

Year ending June 30, 1864	.	.	.	\$ 254,218.34
" " " 1865	.	.	.	287,108.00
" " " 1866	.	.	.	442,477.56
" " " 1867	.	.	.	424,099.17
" " " 1868	.	.	.	435,179.73
" " " 1869	.	.	.	459,722.43
" " " 1870	.	.	.	534,670.79
" " " 1871	.	.	.	632,258.22
" " " 1872	.	.	.	706,907.95
" " " 1873	.	.	.	746,594.89
" " " 1874	.	.	.	715,202.94
" " " 1875	.	.	.	697,988.49

The comparison of these figures with those already given is enough to show that the fees paid into the treasury by consular officers very largely exceed the sums necessary to be drawn

therefrom in payment of the salaries of those who are thus compensated. In addition to this, it must be remembered that fees not paid into the treasury provide the whole compensation for about seventy-five other consuls and commercial agents, and for about three hundred and fifty consular agents. The system is not only self-supporting, but actually yields a considerable net revenue to the treasury.

To present the matter, however, in another form, and with the sanction of an official statement, we invite attention to the subjoined table, which is derived from the annual report of the fifth auditor of the treasury for the year 1868, continued to the present time from materials furnished by the subsequent reports of the same office. This table, beginning with the year 1858, shows the deficiency each year for a series of years, and then the surplus each year for another series of years, arising from the settlement of consuls' accounts. The balances are not quite so favorable as they ought in truth to be, because the loss by exchange is added to the consuls' drafts for salaries on the one side; while the fees are all collected in gold or its equivalent, and if actually remitted to the United States would yield a premium on exchange more than enough to cover the loss by exchange on the smaller sum sent abroad to pay salaries. In point of fact the fees are disposed of (generally by remittance to the bankers of the United States in London) in such manner as consuls may be instructed, in order that they may be used in making payments abroad with the greatest advantage to the government. We make no change in the figures, however, on this account, preferring to present them precisely as officially reported by the fifth auditor. There are some slight differences from the figures we have already given for a few of the entire years, owing to the change from the calendar to the financial year already mentioned. The deficiency or surplus in each year is ascertained by comparing with the aggregate of fees collected, not only all payments of salaries to consuls-general, consuls, consular clerks, and commercial agents who are thus compensated for their services, but also the payments to such officers of this general description as collect an excess of fees over the amounts which they are severally allowed to retain for compensation. The following is the table : —

DEFICIENCY OR SURPLUS IN THE SETTLEMENT OF CONSULS' ACCOUNTS
EACH YEAR BETWEEN THE PAYMENT FOR SALARIES, INCLUDING LOSS
BY EXCHANGE, AND THE AMOUNT OF FEES REMITTED.

Year.	Deficiency.	Surplus.
1858	\$ 140,742.05	_____
1859	157,157.44	_____
1860	152,310.20	_____
1861	160,410.04	_____
1862	188,992.68	_____
1863	252,417.43	_____
1864	109,516.65	_____
1865	71,653.64	_____
1866	_____	\$ 91,906.62
1867	_____	42,089.77
1868	_____	61,428.84
1869	_____	75,722.54
1870	_____	73,706.20
1871	_____	147,619.59
1872	_____	223,682.84
1873	_____	197,997.33
1874	_____	144,517.18
1875	_____	148,816.62

The allowances made to consuls in addition to their salaries, by the government of the United States, although less meagre than formerly, are still moderate. At certain posts, precisely designated by law, there is an allowance for clerk hire, the total sum thus authorized being \$ 51,000. Consuls are generally allowed for office rent to an amount, until recently, not exceeding ten per cent, but now not exceeding twenty per cent, of their respective salaries. They are furnished at government expense with stationery for official purposes, the arms of the United States, seals, flags, and bookcases (only one at a time of any of these things), and are reimbursed their actual payments for postages and some other miscellaneous matters of absolutely necessary expenditure; but their accounts are subjected to a strict scrutiny, and they find themselves obliged to pay from their own pockets for many things which it often seems to them might reasonably be considered proper objects for allowance from the government.

The allowances now authorized, compared with those previously made, would perhaps be regarded as sufficient, if they were not fettered by the specific language of the law, and if an account supported by vouchers were not required for every item. It is worthy of consideration, whether it would not be just as well (either with or without raising the percentage from twenty to twenty-five per cent of the salary) to make the allowance cover not only office rent, but all other incidentals whatsoever (excepting clerk hire and postages), certified by the consul as necessarily expended by him in the due discharge of his consular duties and the maintenance of his consular office. This, as we shall presently have occasion to explain, is the British usage, and it has one obvious advantage, in saving a world of red tape and of accounting-officers' time in the examination of vouchers and accounts. It is rarely, if ever, that the limit of expenditure authorized by law in such things is not fully attained. There is an infinity of detail involving expense to a consul for which no provision is now made, often in matters insignificant in themselves and not pleasant to talk about. For instance, no American citizen who has occasion to visit a consulate abroad, likes to see the windows dirty and the floor covered with filth. But who does he suppose ought to have washed the windows or swept out the office in the morning? The government does not allow a cent for any such expense. It would appear to be the theory of the government that the consul should wash his own windows and sweep his own office, on Jefferson's principle, that one is sure a thing is well done when he does it himself. Even clerk hire is allowed but at few places; a charge for anything like a porter or messenger would startle the accounting-officers at Washington like *Oliver Twist's* demand for a second helping of soup. So, also, the visiting citizen is probably pleased to find the consular office warmed in winter; and if it is open in the evening (as very many are kept open for the convenience of travellers, or at certain times, at seaports, for the convenience of ship-masters) it ought to be lighted; but no allowance for fuel or lights would pass in an account. Prior to 1852, indeed, consuls were expected to pay themselves for the paper on which they wrote their despatches and the pens with which they wrote them. Mr.

Donald E. Mitchell (Ik Marvel), in his amusing account of his experiences as consul at Venice, attributes the allowance by the government of charges for official stationery to Mr. Edward Everett's brief term of service as Secretary of State. But even now, the consul must pay for the table on which he places his inkstand and paper, and (if not for the chair in which he sits himself) for the chairs in which the people sit who come to see him on business. Bookcases are the only articles of office furniture allowed to consular officers at government expense; and of these only one at a time. We have known of consuls ingenious enough to construct a plan of a bookcase that would also serve as a table or desk to write upon; but to make a set of chairs of any article that could be vouched for as a bookcase we believe has baffled even consular ingenuity.

All trouble about a vast variety of matters of this sort would be obviated by a fixed allowance for miscellaneous expenses of all kinds, proportionate to the salary; with the exception of clerk hire and postages, which we suggest as exceptions for obvious reasons. This might be done, and vouchers still be required; but we think it would be found advisable to adopt in this respect also the usage of the British government. As we have already said, when the amount of expenditure is limited, a voucher furnishes very little protection to the government; in the case of an officer willing to impose upon the government, no protection at all. The necessity for giving vouchers is often a source of great inconvenience, a hardship which presses most heavily on those consuls who are most sensitive about the scrupulous exactness of their accounts. We select for example this matter of office rent, the allowance of which is so gratefully accepted by consuls that they willingly undergo much annoyance to become entitled to it. A separate account is required for each quarter's rent, supported by a voucher showing that just the amount claimed in dollars and cents in gold was paid and received for that quarter's rent; the quarters being of course quarters of the Gregorian calendar year. But suppose the consul's post is in a Mohammedan country, where a year is but 354 days, corresponding neither at beginning or end with the Christian year; and suppose the custom of the country is to pay rents a year in advance, and that considerable pecuniary

advantage results from a compliance with this custom. It is easy to say these things can be explained to the landlord, who will be glad enough to give vouchers to a paying tenant in any form required. Suppose, however, the landlord is a rich proprietor, or that he is an invisible and soulless corporation, like the Trustees of the Sears Estate in Boston, or the Vestry of Trinity Church in New York, owning large amounts of real estate and having their own usages and forms, on their side, to which *they* expect *tenants* to conform. To begin with, for the consul to be obliged to tell such people that he expects to be reimbursed the rent-money by his government, (and that so rich !) is to double the landlord's charge at the very threshold of the negotiation. These are no imaginary suppositions, but actual facts. How easy the temptation to the consul to abandon the landlord altogether, and get his official vouchers signed by somebody else ; for who at Washington can possibly know who his landlord really is ? Many people occupying offices in Boston or New York could not give the name of their landlords, that is, the actual owners of the buildings where their offices are situated, to save their lives. We must not be misunderstood ; it is not at all probable that vouchers are rendered in excess of the sums expended ; but this is due to the honesty of the consul and the meagreness of the allowance, not to any additional security furnished by the voucher.

If we turn from our own consular system to that of Great Britain, the only country rivalling the United States as a commercial power, we find that ours is an establishment as strong as theirs in the numbers, at least, of its *personnel*, but maintained at an inferior cost, the difference indeed being so considerable as to suggest almost irresistibly the inference that either we pay too little, or our cousins too much, for substantially the same thing. The British consular establishment consists of 33 consuls-general, 137 consuls, 414 vice-consuls, and 54 consular agents. Nearly all of these officers are paid salaries, or receive fixed allowances, or enjoy both of these sources of personal emolument from the government exchequer. A few consuls are designated in the lists as "unpaid," but none are compensated by fees, — that system being unknown in their service. The British exact a very much smaller amount of

fees than ourselves, and all that is exacted is received into the exchequer. It is difficult to make a just comparison of the numbers of the two services, if vice-consuls and consular agents are included, because these classes of officers (especially the latter) stand on a different basis in our service, and are much more numerous. Taking *paid* consuls-general and consuls together, we have 185 against 170 in the British service. But it must be remembered that Great Britain has occasion to maintain but eleven consulates in the United States, while that Empire with the vast extent of its colonial dominions furnishes about sixty posts which we must fill with consuls-general or consuls to whom salaries are paid, besides fourteen more who are allowed to retain the fees they receive. Without going too closely into the comparison, it is perhaps fair to assume that each of the two countries maintains about the same number of consulates of the same degree of importance as the other in places not falling within the jurisdiction of either; the preponderance, however, being on the side of Great Britain.

Our service costs, as we have seen, for salaries, \$411,500; for clerk hire, \$51,000; for office rent, if estimated at the maximum, \$79,400; and some other allowances, which may raise the whole sum to \$600,000, more than the whole of which is reimbursed and cancelled by the amount of fees paid into the treasury by consuls.

On the other hand, the British government pays to consuls-general and consuls, salaries amounting to £100,000 sterling, besides making them allowances to an additional amount of £28,000, which they may use for clerk hire, office rent, or such other matters as appear to them respectively proper subjects of government expenditure, without rendering specific accounts therefor, and without furnishing vouchers. In addition, the British government pays to vice-consuls and consular agents salaries amounting to £20,000, with allowances amounting to £6,500. The aggregate of these sums is £154,500. Against this expenditure, the amount of fees remitted home from the several British consulates in recent years has been the following:—

CONSULAR FEES RECEIVED BY THE BRITISH GOVERNMENT.

Years.	Amount.
1870-1	£ 33,448
1871-2	33,132
1872-3	30,282
1873-4*	31,258

While our service, therefore, is more than self-supporting, that of our British cousins, maintained at a gross expenditure one half larger than ours, requires an outgo from the exchequer equal to about \$ 600,000 annually.

The British government also maintains a most comprehensive system of retiring pensions and superannuation allowances, under which not less than £ 17,000 annually is paid to rather more than fifty members of the consular service who have ceased to do any work.

Our survey of the consular system of the United States would be incomplete if we omitted to mention several matters which are either peculiar to certain consulates, or relate remotely, if at all, to strictly consular duties. We shall review them as briefly as possible.

The law authorizes the appointment by the President of eight interpreters, to be attached to consulates in China, Japan, and Siam, and also one at Hong Kong, which is a post in the British dominions. For four of these, salaries at the rate of \$ 2,000 each are allowed, and for four others, salaries at the rate of \$ 750 each,—a rather wide difference. Besides this provision for interpreters appointed by the President, the law authorizes an allowance not exceeding \$ 500 each for the compensation of interpreters at twelve other consulates in the same countries, and \$ 500 each for “interpreters, guards, and other expenses” at six consulates in the Turkish dominions, namely, Constantinople, Smyrna, Cairo in Egypt, Beirut and Jerusalem in Syria, and Candia.

The law also, as we read it, authorizes the appointment of seven marshals for consular courts, four in China, one in Japan, one in Turkey, and one in Siam; the last, by an express provision of law, to receive no salary: it is perhaps needless

* This is the latest year for which the return is included in the most recent issue of the “British Foreign Office List,” that for January, 1876.

to add that the position is vacant. The authorized compensation for the other marshals is \$ 1,000 each, together with the official fees received. The annual appropriation, including loss by exchange, has recently been \$ 7,700; and we believe there are as many as four, besides a so-called vacancy in China, and two in Japan, in addition to the one in Turkey, at Constantinople. These officers are necessary, but they are needed at every consulate in the countries named, as well as at those specially designated in the law. If the allowance for "interpreters, guards, etc.," at certain consulates in the Turkish dominions, were enlarged and multiplied so as to cover all the more important consulates in China, Japan, Turkey, and Siam, the marshals might perhaps be dispensed with, without materially increasing the cost to the government.

The provisions of law last mentioned add fifteen to the number of persons belonging or attached to the consular service, holding appointments from the President or Secretary of State, making our total for the *personnel* (exclusive of the ministers resident and consuls-general to Hayti and Liberia) eight hundred and fifty-four, divided as follows:—

CONSULAR SERVICE OF THE UNITED STATES.

Receiving salaries, 213	{	1 agent and consul-general.
		1 secretary of legation and consul-general.
		15 consuls-general.
		162 consuls.
		6 commercial agents.
		13 consular clerks.
		8 interpreters at consulates.
Not receiving salaries, 641	{	7 marshals of consular courts.
		2 consuls-general.
		59 consuls.
		14 commercial agents.
		15 vice and deputy consuls-general.
		187 vice and deputy consuls.
		17 vice commercial agents.
	{	347 consular agents.

We proceed to mention a few other matters, the expense of which does not appear to belong to the cost of the consular establishment proper, although they are necessarily provided for at the charge of the government. For rent of prisons and wages of the keepers, in the Oriental countries already mentioned in speaking of the interpreters and marshals, Congress annually appropriates various sums, amounting this year to \$ 21,250, besides \$ 5,000 for a court-house and jail at Yedo in Japan. For bringing home persons charged with crime, the usual appropriation has been \$ 5,000. For the relief of distressed seamen, \$ 100,000 is appropriated for the present year; the amount actually expended each year fluctuates with the number of marine disasters, and is always partially covered by the extra wages collected by consuls and remitted by them to the treasury. "To enable the President to acknowledge the services of masters and crews of foreign vessels in rescuing American citizens from shipwreck," \$ 5,000 is appropriated this year, the same amount which has been usual heretofore. This is a piece of inexpensive international courtesy which the most rabid reformer in the pretended interest of economy should not wish to disturb. The acknowledgment is made, as occasions arise, in the form of the present of a chronometer, watch, or some other article useful to seamen, or a sum of money, sometimes, to be divided among several engaged together in the deed of humanity; the expenditures fall well within the appropriation, and a similar acknowledgment on the part of foreign governments is usual when American sailors rescue their subjects from shipwreck.

Besides proposing to amend existing laws to reduce the salaries of many consuls, as already mentioned, the bill of the House of Representatives proposes for the next financial year to reduce the allowances for the clerk hire of consuls from an aggregate of \$ 51,000 to \$ 42,600, and similar reductions in other appropriations, including some of those last mentioned, the most considerable apparent saving being in that for the relief of distressed seamen, which would be cut down from \$ 100,000 to \$ 60,000. It is sufficient to say of these proposals, that such of them as would actually take effect could only result in impairing the efficiency of the service, by contracting

sums already pitifully scant; and securing an addition to the revenue derived from fees levied upon commerce by the doubtful means of diminishing the services for which the fees are exacted as an equivalent.

For allowance to widows or heirs of deceased diplomatic as well as consular officers "for the time that would necessarily be occupied in making the transit from the post of duty of the deceased to his residence in the United States," five thousand dollars is this year's appropriation, of which the smaller part attaches to the consular service, as the allowance is made at the rate of the salary. The reader will perhaps be surprised to learn that this provision for widows, certainly not over-generous, is as recent as an act passed February 22, 1873. Before that date, when a minister or consul died abroad, whether alone or surrounded by his family, the accounting officer calculated his salary exactly to the day of his death, and the government paid no more.

This enumeration exhausts the list of government expenditures for objects connected with the consular service, if we except the appropriation for "necessary expenses attendant upon the execution of the Neutrality Act," which we mention, although it belongs rather to the diplomatic service than to the consular, if to either; being available, and used, no doubt, quite as frequently to cover objects of domestic as of foreign expenditure. We mention it because it explains the only appropriation to which the name of "secret-service fund" can with the slightest propriety attach, and it may be interesting to our readers to see just how much "secrecy" it implies, and how this is effected. The limitation in the law is thus expressed:—

"To be expended under the direction of the President, pursuant to the third section of the act of Congress of May 1, 1810, entitled 'An Act fixing the compensation of ministers and consuls residing on the coast of Barbary, and for other purposes.'"

Observe how scrupulously we adhere to the ways of the fathers. The act of May 1, 1810, was passed when the Republic had scarcely attained its majority, if that comes to republics at the age of twenty-one years. The act has long since become inoperative for any purpose save to serve for this reference in

the annual appropriation, and indeed, for that or any other purpose, it has now been absorbed in the Revised Statutes, although, oddly enough, its substance there appears under the citation of a different act. But we will quote it as it was enacted sixty-five years ago, when the whole expenditures of the government scarcely exceeded \$13,000,000, and that part of them affected by this act must have fallen short of \$100,000.

In the first place, the carelessness of engrossing clerks, one after another, has done injustice to the title of the act. It does not relate merely to "ministers and consuls on the coast of Barbary," but it is entitled "an act fixing the compensation of public ministers, and of consuls residing on the coast of Barbary, and for other purposes"; it covered the whole diplomatic establishment of the infant Republic as it then existed, and the consular establishment so far as we had any, and it repealed two previous acts upon the same general subject. Its principal purpose was to define and limit salaries, the maximum for a minister plenipotentiary being fixed at \$9,000; for a *chargé des affaires*, \$4,500; for a secretary of legation, \$2,000; for a consul to reside at Algiers, \$4,000; for a consul to reside at any other of the states on the coast of Barbary, \$2,000; not more than one consul to be appointed for any one of these states. It allowed not exceeding "one year's full salary" to be paid to a minister plenipotentiary or *chargé des affaires* as outfit,—a provision of law that was maintained until 1855; but at the same time carefully provided that "no consul shall be allowed an outfit in any case whatever, any usage or custom to the contrary notwithstanding." By the second section, provision was made to prevent the payment of these or any salaries to any person not duly appointed; this part of the act, which has no doubt always been in force, and is incorporated in the Revised Statutes, has not always, we fear, been strictly observed. Next followed the third section, to which the appropriation refers, in these words:—

"SECTION 3. *And be it further enacted*, That where any sum or sums of money shall be drawn from the treasury, under any law making appropriation for the contingent expenses of intercourse between the United States and foreign nations, the President shall be,

and he hereby is, authorized to cause the same to be duly settled annually with the accounting-officers of the treasury, in the manner following, that is to say: By causing the same to be accounted for specially, in all instances wherein the expenditure thereof may in his judgment be made public; and by making a certificate of the amount of such expenditures as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sum or sums therein expressed to have been expended."

As re-enacted in the Revised Statutes, where it stands as section 291, with a marginal reference to an act of February 9, 1793, which was repealed in 1798, the section applies to "any sum of money which has been or shall be issued from the treasury for the purpose of intercourse or treaty with foreign nations in pursuance of any law," and gives the President precisely the authority in the section just cited from the act of 1810, substituting the word "specifically" for "specially" (probably a clerical error in the act of 1810), and by using in the last clause, after the semicolon, the phrase, "and by making or causing the Secretary of State to make a certificate," etc. The provision applies therefor as a matter of standing law to the usual appropriation "for the contingent expenses of foreign intercourse proper and of all the missions abroad," which this year* is \$100,000, the same sum which it has been for several years past. Until recently these appropriations were divided; whether together or separate, nearly the whole sum is necessarily absorbed by the most ordinary expenses of diplomatic officers, for there is no other appropriation from which they can be paid. Even with the addition of \$20,000 for expenses under the Neutrality Act, the sum which could be applied to any secret purpose would be too small to give ground for alarm. The Neutrality Act, it is probably unnecessary to say, is the act of 1818, of which so much was said during the discussion of the Alabama claims, now forming title 67 of the Revised Statutes. For want of such an act, or for want of such effective proceedings on the part of the

* The vote taken in the House of Representatives on the 11th of February last would reduce the appropriation for this purpose for the next fiscal year to \$50,000. It relates exclusively to the diplomatic service.

executive as that act authorizes and requires, Great Britain was mulcted in damages to the amount of \$15,500,000. We can well afford to keep the act upon our statute-book, to appropriate \$20,000 a year for the expenses of its execution, and to allow the President large liberty of discretion in the expenditure. In point of fact the expenses are not large, and in some years the fund is not drawn upon at all.

It is gratifying to observe that contemporaneously with the measures taken by Congress within the last few years for improving the organization of the consular department, there has been an improvement in the matter of appointments, and some symptoms have appeared of a willingness to introduce the system of promotion within the service, which, if persevered in, would prove a most powerful stimulus to its efficiency. Mr. John M. Francis, who had been our minister resident in Greece since 1871, resigned in 1873. To fill this vacancy, Mr. J. Meredith Read, Jr., who had been our consul-general at Paris since 1869, was appointed minister resident to Greece. Mr. A. T. A. Torbert, who had been our consul-general at Havana since 1871, was appointed to be consul-general at Paris. Mr. Henry C. Hall, who had been our consul at Matanzas since 1864, was appointed to be consul-general at Havana. All three of these promotions were effected by appointments to the new positions under date of November 7, 1873. Finally, to fill the vacancy caused by Mr. Hall's transfer to Havana, Mr. James W. Steele was appointed to be consul at Matanzas under date of March 19, 1874, this being a new appointment from outside the service. The salary of the consul at Matanzas is \$3,000; that of the consuls-general at Havana and at Paris, \$6,000; that of minister-resident in Greece at the time of Mr. Read's appointment, was \$7,500. The promotion to a post of greater responsibility and higher compensation was in each case a well-deserved recognition of the value of the services of a faithful and efficient public officer.

It would facilitate such transfers of a consul from one post to another, if it should be made a matter of usage, to which we can conceive of no objection, to make the original nomination by the President transmitted to the Senate for confir-

mation, that of John Jones for instance, as "consul of the United States," without specifying any particular post for his service. The nomination once confirmed by the Senate, the officer would be duly appointed "consul," and he might be stationed for duty at first, if this be thought necessary, at the post contemplated at the time of his nomination; but he could be readily transferred to other posts from time to time as the exigencies of the service might require or the abilities he displayed might warrant. It would be thought a singular thing if a separate appointment, with the confirmation of the Senate, were required to invest a navy officer with the command of each particular ship to which he may be appointed; or an army officer to the command of each particular military post where his services may be needed. The absurdity of a precise designation of the post of duty in the first appointment is, however, equally great in the consular service.

The usage we suggest would moreover go far to mitigate the inconveniences to which we have alluded as arising when a vacancy occurs from the death of a consul at an important post, and for which the presence of a vice-consul is at best but an insufficient remedy, if the Secretary of State, or, in case of unusual emergency, the minister of the United States in the foreign country could at once send to the spot where the vacancy has arisen a consul of experience who might be spared temporarily at least from his regular post.

It would be easy to suggest some other matters in which, perhaps, improvements might be introduced into the consular service; but the great progress which has been quietly made within the last few years should assure the people of the United States that their interests will not be neglected in this respect, and give confidence that any check in the path of advance will be but temporary. Under all the drawbacks of insufficient salaries, unequal and inadequate allowances, entire want of system in appointments and absence of promotions, without pensions or retiring allowances, the consuls of the United States have heretofore proved themselves as a body as faithful and efficient as those in the similar service of any other country. Many distinguished gentlemen have been numbered in their ranks, and have displayed their abilities as occasion offered by

acts of singular merit. To some of these men and deeds we had proposed to refer, but the limits we have already exceeded forbid. We esteemed it one of the special advantages of the recent improvements in the system, that meritorious officers already in the service might be led in consequence of them to continue in a career which, under the watchful supervision of the Department and intelligent legislation of Congress, seemed likely at last to deserve in some degree that name. It is to be hoped that the spasmodic and short-sighted action of the House of Representatives within the last few weeks may not operate as a discouragement.

CHARLES HALE.

ART. IV.—CHIEF JUSTICE CHASE.

IN speaking briefly of the life and character of Chief Justice Chase, no attempt will be made here to go much beyond those decided characteristics of the man that seem to mark him as one of the most distinguished of the present century, which has been by no means deficient in the number or qualities of its eminently great and good men. Omitting all discussion, except incidentally, of Mr. Chase's education, both preparatory and professional, and also of his services at the bar, and as Governor of Ohio, and Secretary of the Treasury, we shall limit ourselves mainly to two leading points,—his conservatism as a statesman, and his eminent qualities as a judge.

I. The world recognizes Mr. Chase as one of the most, if not the most, earnest and devoted among American advocates of antislavery principles. But he is even more distinguished, perhaps, for the quality and character of his opposition to slavery than for its earnestness and sincerity. While most reforms of this character, and this in particular, have been largely based upon the theory of schism and separation from the established order of things, both in the organic law of the government and especially in its administrative functions, there is nothing of this character, in any very marked degree certainly, in any thing said or done by Mr. Chase in opposition to slavery.

He seemed to comprehend and to feel from the very outset of his long-continued and determined warfare against slavery, in all its manifestations and pretensions, that it existed as one of the recognized institutions of the country; that it really formed one of the essential compromises upon which the national Constitution was founded and without which it could not, probably, have been obtained; and that it must therefore be encountered by prudent administration and wise reform, instead of denunciation and revolution. Hence we find him, at all times, working diligently and patiently to effect all possible limitations and restrictions upon the institution, on the ground that freedom was national and slavery sectional; that by the long-established and clearly recognized principles of the common law of England, which this country had inherited or adopted in full measure, freedom possessed a charter everywhere within the dominion of the principles of magna charta, and slavery nowhere beyond the limits of its express recognition in the laws of the land.

Hence we have never heard from Mr. Chase, even in his most eloquent and excited harangues, in the courts or in the national Senate, or anywhere else where he was called repeatedly to enforce his antagonism against slavery, any of that violent or profane denunciation against the national Constitution, which, for a time, formed a not insignificant proportion of anti-slavery literature. It is not important now to inquire wherein consisted this firm and persistent conservatism of Mr. Chase's warfare upon slavery, or how it originated. If it had been a mere stroke of far-seeing and wisely planned policy, it would have been entirely justifiable, and eminently worthy of its author. For no one so wise and so discriminating as Mr. Chase could fail to comprehend that a nation, as stable and prosperous as ours, which had suffered so many hair-breadth escapes as we did in securing so unrivalled a constitution, would feel extreme reluctance, to say the least, in putting the whole in peril in order to initiate a reform so uncertain in its promise of favorable issue, however desirable they might regard it. He naturally felt, therefore, from the first, as a wise master-builder, that if slavery were ever to be expelled from our institutions, it must be done by the healthy and normal action of the vital

forces within the Constitution itself. Some speculations upon the question of Mr. Chase's conservatism, more curious than wise, have attempted to deduce it in large measure from his religious training in the principles of the book of Common Prayer. No doubt the habit through life of asking divine aid, almost daily, in obtaining deliverance "from all heresy and schism," might be expected to have some effect in keeping one from separation and rebellion both in church and state. But Mr. Chase was not at all more conservative in regard to his antislavery action, or anything else, than was Mr. Lincoln, and probably no one will attribute any portion of the latter's conservatism to his religious training. We must therefore conclude that it was an instinct of self-preservation as to the government, and a far-seeing policy as to reform, in both these eminent men and in all our other most reliable statesmen, that while they have been awake to the necessity of reforms in the government, and especially in regard to the limitation and final extinction of slavery, both for our credit and our progress as a nation, they have all, with rare exceptions, felt the imperious necessity of keeping within the prescribed limits of our organic law.

Revolutionary radicalism is sometimes, no doubt, demanded, in large proportions, to initiate great national reforms, but something more conservative and prudent is commonly required to bring them to a successful issue, without serious detriment to other vital interests. But those who guide the storm and direct the whirlwind of human passion, however indispensable in all successful reforms, are not always the ones to whom the actors in the agitating scenes of the drama, at first, certainly, accord the highest measure of commendation; when the din of battle has passed away, the wise and the prudent will not fail of their due reward. The impartial historian will be compelled to award the largest measure of praise and glory to Mr. Chase, on the whole, as probably the wisest and most earnest of all the workers against slavery in our country.

He seemed to feel very early in his career, that antislavery, in order to be successful, must have the support of a party which did not profess any antagonism with the acknowledged principles of the written Constitution of the government. And

although elected to the United States Senate by the co-operation of the Democratic party, with which he continued to act until he found it committed to the deliberate purpose of repealing the Missouri Compromise, and thus extending slavery or a contest for its establishment in all the Territories where either slave labor or the raising of slaves could be profitably pursued, he finally felt compelled to abandon that party and to constitute the Free-Soil party for the purpose of restricting slavery to the States where it was then tolerated. And notwithstanding his anomalous attitude in the Senate as to party affinities at this time, his position was nevertheless influential and commanding; and he aided, more than any other one man, perhaps, in the formation of the Free-Soil party. We are not disposed to underrate the efforts of that large class of workers and agitators in the same cause, who fell back upon the divine rights of humanity for their basis of action; which, however specious in theory or sometimes effective in rhetoric, has even less practical support in the true theory of civil government, than the much-abused maxim of the divine right of kings and of all governmental authority, which, indeed, receives but small countenance in modern theories of government. Admitting, in the abstract, the full force of all this unorganized and rebellious spirit against wrong and injustice, it is none the less evident to all reflecting persons that no such theory of reform can ever receive much countenance from the truly loyal, whose minds are so far instructed in the principles of government as fully to comprehend that in all their labors of this character they are but giving countenance and support to rebellion and revolution. Mr. Chase, both from education and principle, understood and felt all this, and comprehended fully that the masses of the American people were too conscientious in their religious feelings and too intelligent and well instructed in their allegiance to the Constitution, to initiate a revolution, even for the accomplishment of an end so desirable as the destruction of slavery; knowing, as he did, that the destruction of one of the recognized institutions of the country, by force and violence, could not probably be effected without the speedy destruction also of all government. No man comprehended this fundamental axiom in civil government more thoroughly or felt its force and

truth more profoundly, we believe, than Mr. Chase. To the end, therefore, of establishing a theory, and founding an organization for the limitation and restriction and ultimate peaceful and legal extinction of slavery, he labored, so to speak, night and day, in season and out of season, with precious little aid, he must sometimes have felt, from those radical antislavery workers, not unjustly called the destructives of the party, who claimed to be enlisted, indeed, in the same crusade, but upon the muster-roll of Omnipotence Himself, and who would not therefore stoop to ordinary human agencies in the accomplishment of their purposes. There is always, in all countries, a numerous class of good men, who seem to suppose that the divine mind cannot but look with special favor upon those who defy all human law in the service of what they are pleased to dignify with the high-sounding epithets of "conscience" and "divine law," written, as they tell us, by the finger of Omnipotence upon the human heart; not always remembering that much of this depends upon the reader more than upon the writer. Some men, in all ages and countries, will insist upon reading "self-will" as if it were written "conscience."

But Mr. Chase suffered under no such hallucination or delusion. From the first he resolved to do his best, within the law, to crush the fatal curse of slavery which he knew was to some extent imbedded in the national Constitution. And he was wise enough to see his opportunity in the inauguration of the Free-Soil party in the national form it assumed in 1848, when it presented, as its candidate for President, one of the oldest, most highly honored, and respected of the old national Democratic party, who had already sustained the office of President for one term with the highest credit both to himself and the country, and who had been defeated in his re-election, as his friends believed, by the efforts of the slaveholders. When the constitutional opposition to slavery, of which Mr. Chase was at the time the acknowledged champion and leader, had accomplished all this, it required no prophetic inspiration to comprehend that its days were numbered and its final extinction could not be very remote. And if the spirit of Mr. Chase's constitutional opposition to slavery had been honestly and faithfully followed, there seems to us no great reason to

question that slavery might have been abolished with less injustice, with infinitely less cost and suffering, and in little more time than has already elapsed in getting rid of it, without, in fact, in any very perfect manner ridding the nation of its evil consequences.

As evidence of Mr. Chase's conservative determination to demand nothing which he did not regard as strictly legal and constitutional, we may here refer to the theory for restricting slavery, which he maintained with so much zeal and eloquence in his speeches in the Senate and in his official communications as Governor of Ohio. In the Senate he urged the abolishing of slavery and by consequence the slave-trade in the District of Columbia by act of Congress, which was most unquestionably within the constitutional power of Congress, but which so advanced an antislavery advocate as the venerable John Quincy Adams long hesitated to urge, and which was, nevertheless, most unquestionably demanded by the justice, as well as the self-respect, of the national government. He also advocated declaring the inter-state slave-trade illegal by act of Congress, which no man now questions the power of that body to do, or to have done, at any time since the adoption of the national Constitution, and which would have done more, at one blow, to limit the institution within its then present boundaries, and finally to secure its extinction, without convulsion, than any measure ever proposed; but few except the slave-owners seemed then fully to comprehend either its justice or its power. He also urged upon Congress the enactment of laws excluding slavery from the Territories, the right to do which is now regarded as most unquestionable. And he sometimes urged, in the heat of debate, the repeal of all laws for the surrender of fugitives from labor, as not being justified by the provisions of the national Constitution, thus leaving that constitutional provision to be executed by those to whom the service of the fugitives was due. This opinion, although defended by the most plausible arguments, and held by some good lawyers, seems more the result of honest zeal in a good cause than of sound legal principles. But it possessed nothing of the revolutionary character, and one of his chief arguments against the earlier laws for surrendering fugitives from labor, that they attempted to

control the action of State officials in effecting a strictly national function, has since been declared well founded by the national court of last resort.

There was, too, one other still more desperate resort than all others against slavery, which has since become very popular in some quarters, — the attempt to incite servile insurrections by means of military incursions set on foot in the free States against the slave States, to which, of course, no man of such comprehension and appreciation of the just obligations of civil allegiance as Mr. Chase could give the slightest countenance. His recorded opinion, as Governor of Ohio, when addressed upon the subject by Governor Wise of Virginia, in the autumn of 1859, just after the invasion of the latter State at Harper's Ferry, is worthy of repetition. "Whenever it shall be made to appear, either by evidence transmitted by you or otherwise, that unlawful combinations by any persons or at any place in Ohio have been formed for the invasion of Virginia, or for commission of crimes against her people, it will undoubtedly become the duty of the executive to use whatever power he may possess to break up such combinations and defeat their unlawful purposes; and that duty, it need not be doubted, will be promptly performed."

And when accused by Senator Butler, of South Carolina, of having drawn up and advocated a resolution in the anti-slavery convention of Ohio recommending those called to subscribe or take an oath to support the Constitution of the United States, to do it with the mental reservation that the provision for surrendering fugitives from labor was so absolutely void as to form no part of it, a view which he had in fact most strenuously opposed when offered by others, he declared in the Senate, "I never proposed the resolution; I never would propose or vote for such a resolution." By thus showing Mr. Chase's adherence to conservative principle in all his opposition to slavery, we may, possibly, not add very essentially to his present popularity, but we nevertheless deem it important to a just estimate of his true character, and important as tending very essentially to the more perfect comprehension of some other of his public acts not well understood by all. And we have no apprehension that his fame, in the long run, will suffer any

abatement from the truth in this respect being fully and distinctly understood by all.

II. Mr. Chase's last great public office was that of Chief Justice of the National Supreme Court, as the immediate successor of two such incumbents as Marshall and Taney, both of whom deservedly rank among the greatest and best of all our eminent public men. Mr. Chase was appointed Chief Justice by Mr. Lincoln, with the approbation of the Senate, on the 6th of December, 1864, and received the oath of office and took his seat upon the bench on the 13th of that month. We do not suppose that Chief Justice Chase's opinions, during the nearly nine years that he held the office, although confessedly very able, will do complete justice to the high character of his weight and influence in the tribunal. His mind had been devoted to, and absorbed almost exclusively by other studies than those here demanded of him, for a very long period considering that it came out of the ripest portion of his mature life. He was now more than fifty-six years of age, and it was too late for ordinary men to make great proficiency in studies so long disused. But Mr. Chase's energy and devotion to duty enabled him sensibly to advance year by year in the attainment of that almost unparalleled excellence of judicial character and attainment ascribed by common consent to his great predecessors, till he was finally recognized by all the more eminent of the American bar as scarcely below the highest measure of greatness attained by any who had before graced the place he held.

For real greatness of soul and true nobleness of character he was indeed second to none, and for high and difficult attainments in the learning of the profession he had few if any superiors. His views were clear and far reaching, without becoming either hair-splitting in refinement or cloudy and obscure from the infinity of the range of their speculations. He always seemed to comprehend the true principles involved, in every case which came before him, even where he was not at first blush entirely familiar with all the learning upon the subject, but this he always mastered with astonishing celerity and accuracy. And his dignity and courtesy in presiding; his patience in listening to argument, sometimes to the dullest and

most useless speculations of counsel which it would be an absurd anomaly to dignify by calling argument, and which manifests itself before this great national tribunal in larger measure and more offensive forms than in the State courts ; his firmness in following his convictions, without forgetting, even for a moment, the respect due to the opinions of those who might fail to see the subject in the same light which he did, and his unwavering courage and determination to allow no obstacle to come between the court and the justice of the case, however humble or unpopular the cause or the parties, have left him an imperishable name among the noblest and the best American judges, the long list of whom will not, we believe, suffer in comparison with those of any age or country, either for learning or character. Chief Justice Chase's summary of the judicial qualities of one of the most valuable of the members of the court, Mr. Justice Catron, presents the outline of the highest judicial character, and, in many respects, is but a reflection of his own qualities as a judge. After dwelling briefly upon other excellences of his departed associate, he adds : " He was even more distinguished by strong practical good sense, by firmness of will, and straightforward honesty of purpose. Ever frank and earnest in the expression of his opinions, he was yet void of desire to impose them arbitrarily upon others. The candor and patience with which he listened to argument found fitting counterpart in the impartiality and equity of his judgments. While the records of this court endure they will recall the memory of the just and fearless magistrate who pronounced them." It is no doubt true that this must have been a somewhat studied eulogium of his departed brother, but if anything demands study and deliberation, it is what we say of the dead, that we may " nothing extenuate, nor set down aught in malice." But we must all feel and confess, that the man who entered upon his great office, with such a sublime estimate and comprehension of the eminent qualities of mind and heart demanded for the full discharge of its difficult duties, could not fail to reach a very high place among great judges. Such a comprehension of the high and difficult duties of his place seems even more indispensable, if possible, than the very highest attainments of professional learning, though this

is more demanded in the office of a judge than in almost any other.

III. But we must briefly allude to two cases, where Chief Justice Chase has been sometimes criticised in no friendly spirit, — his agency in the first decision upon the legal tender question, and the part he took in the impeachment trial of President Johnson : 1. His judicial opinion in regard to the constitutionality of the issue of paper money and declaring it legal tender for all private debts, past and future, by act of Congress, would probably never have been questioned, certainly not in any spirit of rancor and bitterness, had it not been for the part he took, as Secretary of the Treasury, in the creation of this same paper and having it declared legal tender. The gravamen of the charge, therefore, brought against the Chief Justice is, that he could not have been sincere in both cases ; and as he is known to have been intensely serious and in earnest in all his war measures, the inference of some heated partisans has been that his opinion in *Hepburn v. Griswold* (8 Wallace, 603) must have been the result of some transition state in regard to party affinities. This criticism of Mr. Chase seems to possess two very unfortunate, not to say discreditable elements, — discreditable, at least, to those who use it. First, it seems to imply that all opinions of public men, even of judges, must and will, if sincere, conform to the principles of the political party with which they act, at the time of their appointment. Secondly, there seems to be some kind of belief or claim sheltered under this particular form of the charge against the Chief Justice, that he was under a kind of imperfect moral or honorary duty towards the party which called him to the place, either never to change his legal views and opinions upon any subject of party policy, or, if he did, still to disguise his real convictions out of deference to those who gave him his place, in order that he might still continue to serve them “with a perfect mind and willing heart.” One might have supposed any such claim impossible, if we did not know from observation how terrible to weak and cowardly minds is the effect of party terror. There have been thousands in our country, no doubt, and are still many more, who sincerely believe that the obligations to serve the party whose

interests they espouse are superior to all other obligations, human or divine. There is some ground for hope that this vicious excess of party discipline is beginning to give place to better counsels, in some quarters at least, but it has thus far unquestionably in all parties been the cause of much evil and of more folly. The pretence that any one is not at liberty to change a legal opinion upon any subject while acting as judge sworn to do equal right and justice to all men, argues a depth of absurd ignorance or depravity, only to be found, one might fairly hope, among the blindest and the weakest of party following. Any one who had ever had much experience in judicial administration would never fail to feel the gross absurdity of all such pretensions. The writer of this article, although never, so far as he knows, suspected of any unreasonable distrust of his own opinions, whether those of first impression or not, feels compelled, in obedience to a proper respect for the truth, to declare that he has not seldom changed his opinion of the true principles of law governing a case more than once during the argument, and without question such has been the experience of all judges who have felt the same anxiety to reach the truth, as Chief Justice Chase always did. The saddest defect of capacity, either in a judge or any other person, is to become so satisfied with the speculations and conclusions of his own mind that he is no longer capable of listening to argument with a ready and teachable disposition to reach the truth without regard to his present convictions, except as they form part of the basis by which he hopes ultimately to reach the absolute or comparative certainty of what truth is. The just reply to all such cavils against any change of opinion will be found in the homely proverb, that "Wise men often change their opinions, but fools never."

It is known to all that Mr. Chase, as Secretary of the Treasury, adopted the opinion of making anything but coin legal tender, with extreme reluctance and distrust, and merely upon the ground of the exceptional necessities of the pressing exigencies of the war and with the determination to return to specie payment at the earliest practicable moment. The extended argument upon the question before the court by the ablest members of the American bar, and the very unsatisfac-

tory ground upon which the foremost dissenting member of the court placed the argument in favor of the issue of legal-tender paper, might naturally have confirmed the Chief Justice in his early conviction, that the Constitution gave Congress no power to make anything but gold and silver coin a lawful tender in payment of private debts. His own argument in this case, and his dissenting opinion, when it was overruled in the Legal Tender cases (12 Wallace, 457, 570), is perhaps as satisfactory as any which has thus far been made upon the basis of finding the warrant for any such law in the express provisions of the Constitution.

The dissent of Mr. Justice Miller in the case of *Hepburn v. Griswold* places the argument in favor of the constitutionality of the legal-tender act, upon the ground, that it was a "proper and important, and at the time almost an indispensable measure for carrying into execution some of the powers vested by the Constitution in the government of the United States." The learned judge is unable to specify any one particular power of the national government to which this resort became an indispensable accessory, which seems an unfortunate infirmity in the argument; for despotism and irresponsible power are wont to lurk under such convenient generalities, and we involuntarily suspect the soundness of any theory which is not able to define, specifically, the grounds upon which its advocates are content to rest it. The learned judge, in his dissent, selects the War Power and the Borrowing Power, as the most plausible powers of the national government upon which to graft this, as an incident. This must appear to every experienced lawyer, as it no doubt did to the Chief Justice, a most unfortunate selection, at least in one very important particular. Neither of these powers is of the same class, or kind, with that of lawful tender; in legal phrase it is not *ejusdem generis*. This must be classed, and could only, naturally, be sought under the power to coin money and to provide a circulation for the country, and would naturally be expected to appear there, if anywhere, whether it were called a distinct power, or one accessory to others.

In looking at the specific provisions of the Constitution under this head, there would seem to be no question that the

money function or power of the government was regarded, in its entirety, as a national function or power, and as such, was intended to be transferred, in all its parts and incidents, to the national government. Many of the functions of the national government were enjoyed in common with the States, such as making laws, erecting courts of justice, levying taxes, etc. Others, exclusively of a national character, were evidently intended to be transferred *in solido* to the national government. The money power and the commercial power were very clearly of this character, and with equal certainty, it appears, they were intended to be transferred entire to the government then being created, for the exercise of the exclusive national sovereignty, which powers before had resided largely in the separate States, either in whole, or concurrently with the former national authority. This is very apparent from the express provisions of the Constitution. In enumerating the powers of Congress the words used are, "To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures. . . . To provide for the punishment of counterfeiting the securities and current coin of the United States." The word "money" is again used in the provision for raising and supporting armies, in limiting the "appropriation of money to that use" to the term of two years. Again it is provided that "no money shall be drawn from the treasury," etc. And the States are expressly prohibited "to coin money, emit bills of credit; make anything but gold and silver coin a tender in payment of debts." From all which we must infer, that the making and the regulating the circulation and the value of money, and of everything supplying the place of money, must have been intended to be thenceforth exclusively under the control of the national government. The States had before, as is well known, emitted bills of credit and made them lawful tender for debts. (*Craig v. Missouri*, 4 Pet., U. S. 410.) All this is now prohibited to the States, and unless we can suppose it was intended altogether to prohibit the circulation and tender of such securities in future, we must suppose that power was intended to be exercised thereafter exclusively by the national government. If not, it is difficult to conjecture why it should have

been expressly denied to the States and not to the nation. The granting titles of nobility is expressly denied, both to the States and the nation, because it was not intended to exist under the new form of government, in any form, or anywhere. Why, then, if it were intended to deny the power, both in the nation and the States, of issuing bills of credit and making them legal tender for private debts, should it have been expressly denied to the States and not to the national government? There can be no fair answer, as it seems to us, to this inquiry, except to recognize its continued existence in the national government. The fact, too, that provision is made, in the words of the Constitution, for punishing the counterfeiting the "*securities and current coin of the United States*," shows very clearly, that the existence and necessity of protecting the genuineness of such securities, as part of the currency of the nation, was distinctly in the mind of the framers of the Constitution, at the time it was presented for adoption. This provision for the punishment of counterfeiting the "*securities*" and "*current coin*" of the United States shows, very clearly, also, that it was intended for the protection of the *currency*, else the subject might have been left to the protection of the general law against the forgery of contracts. The word "counterfeiting," too, has a special application, by common usage and consent, to the currency of the country, although applicable also, in a less strict sense, to other forgeries. The use of the word "money," too, as embracing all appropriations from and the payment of all sums out of the treasury, would favor the same construction that "money" was intended to embrace, not only gold and silver coin, but all securities of the government used as circulation, or in payment of public appropriations from the treasury, for which, from some source, there has always, from before the date of the Constitution, been found a necessity. There were four banks of issue, in as many different States, existing at that date, and they have been constantly increasing in the States, until the national government finally deemed it the true policy to tax them out of existence, during the war, and to substitute legal-tender notes and the bills of the national banks in their place. This measure, which was declared legal by a majority

of the National Supreme Court, in *Veazie Bank v. Fenno*, 8 Wallace, 533, is certainly not defensible upon any other grounds than that it is the duty of the national government to supply all kinds of circulation demanded by the exigencies of trade and commerce in the country, or of the government, as is justly maintained in the dissenting opinion of Mr. Justice Nelson, concurred in by Mr. Justice Davis. Some of our most eminent constitutional jurists, including Mr. Justice Story, who dissented from the opinion of the court in *Briscoe v. The Bank of Kentucky*, 11 Peters, U. S. 257, upon this ground, have maintained this view from the first adoption of the Constitution, namely, that the issue, by State banks, of bills for circulation, was not defensible under it. And this view may now be regarded as practically established. Indeed, we may fairly say, legally established, since the decision in *Veazie Bank v. Fenno* is placed by the Chief Justice upon that among other grounds, and it is the only one whereby the case can be made to stand with other decisions of the same court. We cannot imagine any ground upon which the creation of national banks of issue by Congress can be vindicated, except that under the United States Constitution it becomes the national duty to supply such a kind and amount of paper circulation as is demanded by the exigencies of the government and of trade and commerce throughout the country. Upon this ground only, therefore, that the Constitution was intended to transfer the making and regulating of the entire circulation of the country to the national government, and to deny any interference with it on the part of the States, is it possible, in our judgment, to find a legal basis whereon to rest the legal-tender provision in the issue of bills of credit during the war. That has always been done by the independent and sovereign European states. (*Emperor of Austria v. Kossuth*, 7 Jur. N. S. 483, id. 639.) And the British Parliament have made bills of the Bank of England legal tender at an early day for some purposes, and ultimately indeed for most purposes. And the same was the constant and well-recognized practice of the different American States, as to bills of credit, before the adoption of the United States Constitution. (*Craig v. The State of Missouri*, 4 Peters, U. S. 410.) If then we reach the conclusion,

that it was intended to transfer to the national government the well known and long-recognized function of national sovereignty, to coin money and emit bills of credit, and to declare them part of the circulation of the country, for purposes of trade and commerce, and thus make them lawful tender in payment of private debts, and to deny this entire function of sovereignty to the States, we shall find no difficulty in upholding the legal-tender acts, as proper, in a special emergency, notwithstanding we may suppose it was also the purpose of the Constitution to provide, either a currency in gold and silver, for ordinary times, or for all times, one redeemable in that medium. But the attempt to deduce such a power from some independent source in the Constitution, if it is not fairly implied in the definitions applicable to the money power, seems to us scarcely less than absurd. It is certainly in conflict with all the known canons of statutory and constitutional construction. For if it is not granted, either in terms or by fair implication, in that provision of which it is kindred, then it is there denied; and if denied there, it would seem a most unnatural and absurd conclusion to attempt to extract it by some refined process of construction, by reason of the pressure of an unprecedented war, out of an entirely foreign provision in the Constitution. We have been compelled to concede almost superhuman power to the war in turning and overturning principles of construction in the Constitution, but we have never found any reason for adopting this strange conclusion involved in the opinion by which the legal-tender clause was finally upheld, and we are satisfied from his opinion that the Chief Justice felt himself driven to the same conclusion, and we entertain no doubt that all good lawyers held the same views upon this question before the war. Nothing short of a degree of fever heat upon all questions connected with the war has ever been able, as far as we know, to drive any good lawyer to the conclusion now held on the subject of the legal-tender clause. And we feel assured, that the longer the question is discussed, and the more clearly it is understood in all its bearings, the more it will redound to the credit of Chief Justice Chase that he felt an utter inability to adopt the only view propounded by the advocates of the validity of the legal-tender

acts. That he might not, upon the views we have here briefly presented, or upon some other, have come to a conclusion more favorable to the validity of the acts, we do not know. It is enough to satisfy us that he acted wisely in rejecting the only view presented, that it is one which no lawyer, in our judgment, has ever been able to render entirely plausible in a legal point of view even to himself, except upon the mere ground of the exigencies of the war, which, with due deference, seems to us no argument at all. It is but dire necessity which knows no law. It is a forced and unlawful construction, and we believe it will some time give place to one more rational, and equally favorable to the maintenance of this indispensable function of national sovereignty, to make money either of metals or paper.

2. It remains only to speak in a very brief way of Chief Justice Chase's connection with the Impeachment Trial of President Johnson. The trial itself was of a character which had never before occurred under the Constitution. Not, indeed, because it was mainly of a political character, and instigated largely, if not exclusively, by partisan rancor; for most of the American state trials, and, for that matter, the state trials in all countries, naturally rest, in a great measure, upon that basis. But it was an attempt to remove from office, and render forever infamous, the chief executive magistrate of the nation, upon charges of high crimes and misdemeanors, resting altogether, as far as we could ever see, upon the fact that the accused, being always, before the war, a member of the Democratic party, had come into the Republican party upon the issues involved in that controversy, and thus been elected Vice-President of the nation, and in consequence of the lamented death, by assassination, of President Lincoln, had succeeded to the office of President; and in the discharge of the duties of that office had fallen back upon some of the theoretical views and opinions in which he was educated and had hitherto acted. It may be fair, also, to remember, that after Mr. Johnson had been hotly pushed, and rudely rebuked, for not conforming more closely to the views and feelings of his new associates, he very probably had manifested some degree of stubbornness, and violence of temper and over-ardent zeal possibly,

and thus provoked numerous conflicts and some personal quarrels with his subordinates. The attempt to impeach him for malfeasance in office, however, in any view, rested mainly upon no better ground than that he was in the way, and an obstruction to the speedy accomplishment of most of the party policies of the hour. It being known, also, that if he could be put out of place, his successor would prove a most subservient and devoted champion of the party, it became, in the view of the party leaders, a most desirable object to effect the change. There was, however, no regular and legal mode of effecting this, and most of those who afterwards entered into the prosecution with such apparent sincerity of purpose would, if left to their own impulses, no doubt have been content to wait the expiration of Mr. Johnson's term of office. But some few of the more resolute and determined, and not very scrupulous, perhaps, as is common in like emergencies in all parties, devised the plan of the impeachment. This possessed an imposing sound, and carried the more simple and subservient of the party with a rush amounting almost to frenzy and infatuation, as if it were one of the most righteous and praiseworthy indictments ever drawn up, against the most desperate and heartless villain; almost without a parallel in the history of crime. Many attempted to give the trial a kind of factitious glory and grandeur, by comparing it with Bradshaw's Regicide Court, and the condemnation of Charles I. of England.

It would seem that the leaders had resolved, from the very outset, to make the trial as strictly political and partisan as possible, in order to preclude any faltering in the conduct of the senatorial majority, which would thus be ample to secure a conviction in any emergency, about four fifths being of the dominant party. They determined, therefore, that the tribunal should not even be called "a court," but a Senate, or Council of State, convened to record the demands or decrees of the party, in obedience to the dictates of a party caucus, either openly or covertly convened. These men knew the temper and high tone as well as the talent of the Chief Justice, and they naturally dreaded the power of his influence in defeating their bad schemes. They therefore resolved at once to move upon this citadel of justice, which had now become their most dreaded

enemy, with their boldest and best-disciplined troops, and thus by a desperate charge break, if possible, the outer lines of his defences and ultimately compel him to surrender, willingly if possible, but forcibly if necessary, to their imperious demands. The managers upon the part of the House, accordingly, through a committee of the Senate, informed the Chief Justice, in advance of his taking his seat as President of the Court of Impeachment, that they would not recognize him in any other capacity than that of a simple moderator, to keep order and put questions, with no voice whatever in the proceedings, either to speak or to vote upon an equal division. This the Chief Justice, in a forcible and temperate reply, met squarely in the face, denying in the clearest and most unanswerable manner every requirement and demand of this arbitrary and desperate attempt on the part of the managers of the party to overawe the court and to exclude its appointed head, in the very words of the Constitution, from all just participation in the trial.

After the Chief Justice took his seat, however, as the head of the tribunal, it very early and very clearly became apparent that he was adequate to the emergency in giving the proper direction to the movements of the court. Even the most eloquent and daring of the managers seemed awed into decorum and silence by the presence, dignity, and impartiality of Mr. Chase throughout the trial, and never made any further attempt to enforce their demands, except by occasional appeals to the body of the court from the rulings of the Chief Justice, and in these they were signally defeated, the court even modifying their rules of order, prepared in advance in order to exclude the proper voice of the Chief Justice, thereby allowing him, by a clear majority of their number, to rule all points of order and of law, in the first instance, subject to appeal to the court if any senator desired it, and to give the casting vote upon any equal division of the court. It is too near the time of the trial and too many worthy and high-minded men were rashly driven or drawn into the effort to convict Mr. Johnson without evidence, to render it desirable to revive the incidents of the trial in detail. But, as before stated, thus it occurred, through the almost sublime determination and unequalled

talent and energy of the Chief Justice, as it always appeared to us, that what was designed as a mere formality in the sacrifice of Mr. Johnson upon the altar of mad party zeal became a dignified and decorous tribunal for his trial and acquittal.

This trial in fact began and ended almost in the very identical footprints of all our important state trials. The trial of Judges Samuel Chase of the National Supreme Court, and Peck of the District Court of Missouri, began in party rancor and ended in an acquittal by reason of some few of the more judicial-minded members of the Senate refusing to convict upon merely partisan grounds. So, too, in the case of Mr. Johnson, much of the more eminently legal and judicial talent of the majority which had been confidently depended upon for his condemnation refused to soil the ermine of the judge by any such base prostitution.

But we have said all that we desire upon this portion of Chief Justice Chase's judicial life. His conduct and talent, displayed in vindicating the character of the tribunal and his own position in regard to it, form unquestionably the most important and characteristic act of his judicial life, and did more, probably, than any other thing to secure the acquittal of the accused, and thus save as far as it could be done the credit both of the country and of the party instigating the prosecution. The accused before his death was returned a member of that same Senate and declared his determination to forgive and forget all past injuries at the hands of those who sought his overthrow. It is surely proper that others do the same. We would not have alluded to it but for the exceptional importance of the Chief Justice's connection with the trial and the essential bearing it will always be entitled to hold as evidence that Chief Justice Chase may justly be reckoned among the three great Chief Justices of the Supreme Court of the nation.

It is idle to suppose that Chief Justice Chase felt any special interest either in Mr. Johnson or his acquittal, except as it came from his general love of justice and his natural and just indignation at so barefaced an attempt to convert the highest judicial tribunal known to the Constitution and laws into a mere political and partisan instrument, while sitting to deprive

the highest executive officer of the nation, not only of his office, but virtually of his life and character at the same time, since it would deprive both of all value to an honorable man. The solemn farce maintained on the part of most of the managers of persistent refusal to address the Court of Impeachment during the trial in that language of courtesy due to the humblest municipal tribunal received fitting rebuke at the hands of Mr. Stevens of Pennsylvania, one of the managers, whose hatred of shams was only equalled by his love of decency, when he began his final argument in the case thus: "Mr. Chief Justice, may it please the court," — thus yielding everything upon this point which could fairly have been demanded, going even beyond the formal address of the counsel for the accused, who contented themselves with "Mr. Chief Justice and Senators," while the other managers persistently declined to address the court as such, or its head as Chief Justice.

We have thus made a brief, and we fear, somewhat imperfect record of the leading incidents in the public life and conduct as well as an estimate of the true character of one of the great and good men of the Republic. Few, if any, others have been called to the discharge of the duties of so many of the high places in office, both State and national, and no one, we believe, ever evinced the same degree of superiority and eminence in all the places of public trust to which he was called in such various and almost incompatible qualifications.

ISAAC F. REDFIELD.

ART. V. — 1. *Report to the Legislature of Massachusetts of the Commissioners appointed to inquire into the Expediency of revising and amending the Laws relating to Taxation and exemption therefrom.* Boston, January, 1875.

2. *Report of the Treasurer and Auditor of Virginia to the House of Delegates on the Subject of Taxation, together with the Draft of a Tax Bill.* Richmond, November, 1874.

3. *Report of the Joint Special Committee on the Subject of Property liable to and exempt from Taxation, made to the General Assembly of the State of Rhode Island.* January, 1875.

4. *Report of the State Assessors of the State of New York.* Transmitted to the Legislature, January, 1874.
5. *Taxation; Address of George H. Andrews before the Assembly Committee of Ways and Means of the State of New York.* Delivered October 6, 1874.
6. *Exclusive Taxation of Real Estate, and the Franchises of a few specified Moneyed Corporations and Gas Companies.* By ISAAC SHERMAN. New York, 1875.
7. *Methods of Valuation of Real Estate for Taxation.* Read before the Social Science Association of Philadelphia, May, 1874. By THOMAS COCHRAN.
8. *Taxes and Assessments in the City of New York; Report of the Commissioners of Taxes.* 1875.
9. *The Law of Taxation.* By FRANCIS HILLIARD. Boston: Little and Brown. 1875.
10. *The Tax Question: What should be taxed, and how it should be taxed. Suggestions for the People of Tennessee to consider.* By ENOCH ENSLEY, of Memphis, Tennessee. Nashville, 1873.
11. *Taxation of Visible Property.* By WILLIAM ENDICOTT. Boston, 1875.
12. *Unequal State Taxation.* By GEO. H. ANDREWS. New York, 1875.
13. *Unequal Taxation in Delaware.* By ISAAC HINCKLEY. Philadelphia, 1875.
14. *Report of Tax Commissioner, specially appointed under Resolve of the Legislature of the State of Maine.* Augusta, 1874.
15. *Report of Committee of Ways and Means of the Assembly of the State of New York, 1874-5; Special Investigation on the Subject of Taxation.* Albany, 1875.

For many years previous to the commencement of the war in 1861 there was no one class of subjects which claimed in so small a degree the attention of the people of the United States as those of a politico-economic character, — more especially such as pertained to the fiscal administration of the State, the methods and objects of taxation, the distribution of wealth, banking and currency, and the like. That this should have been so is not, however, a matter to be wondered at. The nation, and the several States composing it, were at the period

referred to comparatively free from debt. All taxation was light. Direct taxation by the Federal Government was unknown. Pauperism was mainly restricted to persons of foreign nativity; while to all who were willing to practise both industry and economy, the ability to command a good subsistence, if not an ultimate competence, seemed comparatively easy. Why should the nation trouble itself about vexing and intricate fiscal and social problems before there was occasion? And taking counsel accordingly from the proverb, "Sufficient unto the day is the evil thereof," the nation did not trouble itself.

But with the advent and continuance of the war, the creation of an immense national debt, the suspension of specie payments, the resort to irredeemable paper money, and the re-enactment of extreme protective tariffs, the condition of things above depicted rapidly changed; and the questions and problems which in popular estimation were before insignificant, have rapidly become so important, as to constitute not only the theme of never-ending public discussion, but also the certain issues, on which are to be built the national political parties of the future. And as illustrating in some degree the nature and strength of what may be termed the motor or impelling influences which have forced these changes in public opinion, what could be more pertinent than the statement recently made by the Governor of New York (message of May 11, 1875), that in 1874 less than two millions and a half of the inhabitants of the cities of New York paid in taxes, nearly as much (\$50,429,000) as was the entire cost of the Federal Government—including interest on the public debt—in 1853, namely, \$54,577,000? And he might to our profit and instruction have further added that, taking the aggregate of taxation as the basis of estimate, it cost more by nearly twenty millions to govern the entire State of New York in 1872 than it did to govern the whole Federal Union—war, navy, Indians, interest and all—in 1849. The general public, like the tortoise, is naturally sluggish in its disposition; but as a coal of fire placed on the back of the latter wonderfully accelerates its movements, so the material influence of facts, like those above referred to (in contradistinction to any moral influence), gradually penetrating the hard shell of popular indifference, have

quickened in an amazing degree the interest of the American public in all manner of fiscal and economic subjects. And as a further illustration of how comparatively great the present interest in such subjects is among a people, who ten years ago read few books on political economy, and wrote and published almost none at all, it may be also mentioned, that on the subject of specie resumption and currency alone, probably not less than two hundred separate pamphlets — exclusive of Congressional speeches — have been issued from the American press since 1870.

The various subjects of a politico-economic character which since the close of the war in 1865 have commanded public attention have not, however, come up simultaneously for consideration; but have been evolved, as it were, gradually, from the changing condition of affairs, and somewhat in the following order: *First.* The national debt and its transition from a miscellaneous and temporary to a more permanent and consolidated character, — a work the magnitude and delicacy of which, as well as the skill with which it was executed by the then Secretary of the Treasury, Mr. McCulloch, — has never been properly appreciated. *Second.* The readjustment of the war system of internal taxation. *Third.* The questions of currency, specie redemption, and the retroactive application of the enactment of "legal tender." *Fourth.* The free-trade and protective question, — the interest in which was temporarily smothered by the paradoxical results of the Cincinnati Convention of 1872. *Fifth.* The relations of the State to common carriers, and the methods of intercommunication. *Sixth.* The extent to which the complicated system of import or customs taxes were to be administered through the agency of espionage, special agents and moieties; and latterly, and as yet to a small extent, the subject concerning which it is here specially proposed to treat, — local taxation.

In fact, it is one of the curious incidents of our times, that this particular subject, which exclusively embraces within its scope the methods of raising annually a sum for public purposes (\$280,000,000, estimated) nearly double that at present derived annually from our customs or import taxes (\$155,000,000 for 1874-5); and nearly three fourths of the total

revenue derived by Great Britain from all imperial taxes (£77,000,000 = \$385,000,000, in 1874-5),* should up to within a very recent period have had absolutely no hold whatever on the attention of the American people, and no place of any account in economic literature,—the only treatise or work of any importance, treating of local taxation in detail, published prior to 1870, of which we have any knowledge, being “A Report on the State Assessment Laws,” by a joint select committee of the legislature of New York, in 1863, to which was appended “A Digest of the Mode or Method of Taxation in the several States,” by Alfred B. Street. In 1870, however, the very great importance of the subject having impressed itself upon the attention of Hon. John T. Hoffman, then governor of the State of New York, he induced the legislature of that State to authorize the appointment of a select commission; which commission after an examination of the whole field of inquiry submitted two reports[†] (in two successive years, 1872 and 1873), embodying in addition to a draft of a code of laws and a digest of court decisions, much information of a historical nature; and for the first time in the United States, a discussion of the fundamental principles involved in local taxation, and the theory of their more harmonious application to the anomalous condition of thirty-seven contiguous, sovereign States, embraced under one over-ruling and greater sovereignty. These reports also for the first time in this country created any thing approximating to general public interest in the subject. The report for 1872 was immediately reprinted by private parties for sale as a matter of business,—a circumstance most unusual as respects a public legislative document; while to meet the demands of several constitutional conventions of other States then in session, special editions were ordered and distributed by the State authorities of New York. In Europe, also, both reports were

* The aggregate amount annually raised by local taxation (state, county, city and town taxes) for all purposes in the four States of Massachusetts, New York, Pennsylvania, and Ohio, is about \$150,000,000, apportioned approximately as follows: Massachusetts, \$28,000,000; New York, \$55,000,000; Pennsylvania, \$40,000,000; Ohio, \$27,952,000. The amount raised by local taxation in all the other States of the Union cannot be estimated at less than \$130,000,000 additional; making an annual aggregate of about \$280,000,000.

reprinted and extensively circulated under the auspices of the Cobden Club of England.

In one sense the work of the New York Commission was a failure, but in another it has been a success. It was a failure in the sense that none of its recommendations nor its code have been adopted, and that successive Legislatures in New York have not even so much as proposed to consider its recommendations. It has been a success in the sense that it was the incipient agency in creating a permanent public interest in the principles it discussed, and of the present extent of which the partial list of recent publications constituting the preface of this article affords some indication.

Another agency which has also powerfully contributed within the last few years to make local taxation an independent economic issue of interest before the public, and is likely to continue to do so, is the action of the Federal Courts. So long as the aggregate taxation of the several States was comparatively small, as before the war, and so long as the spirit of patriotism engendered by the war regarded no burden designed to aid in the preservation of the Federal Union as too heavy or unreasonable, there was little disposition to criticise closely or to complain at the methods locally adopted for obtaining revenues by taxation. But when, after the war, this special burden by reason of increased debts and expenditures assumed the character of a continually increasing strain unrelieved by anything approximating to sentiment, then men became both critical and querulous, and very soon cases involving fundamentally the principles and constitutionality of the tax methods resorted to by the several States began to come before the highest Federal Courts for review and determination. The result has been that while as yet little or nothing in the way of reform in local taxation has been effected through the action of State Legislatures, a progress rapid, continuous, and complete to an extent which neither the bar nor the public seem to have as yet fully comprehended, has been made in this same department of fiscal science through a series of decisions of the U. S. Supreme Court; not a few of the most intricate questions involved, and concerning which it would have been hopeless to have expected early and concurrent agreement on the part of

the States, having, since 1858, by re-adjudication, or original decisions, been settled beyond the possibility of controversy. These in their proper order it is proposed to notice hereafter ; but prior to doing so, it seems essential to a clear and full comprehension of the reforms already effected and of those which through all agencies are to be struggled for in the future, to go back and present a review of the whole subject as it were *ab initio*.

The general idea or principle which has thus far been made the basis of nearly all the law and administration pertaining to local taxation in the United States has been founded on a popular assumption, that in order to tax equitably it is necessary to assess everything ; the term *everything* being at the same time used in a sense so indefinite as to embrace not merely things in the nature of physical actualities other than persons, but also persons, income, rights, representatives of property, titles, trusts, conclusions of law, debts, and in short any *act* of assessing capable of resulting in the obtaining of revenue. As a logical sequence of this idea, the exemption of anything from taxation is furthermore held to be not only impolitic but unjust, and if made necessary by circumstances, as something to be regretted.

Equally popular and plausible is the argument by which this assumption, and the administrative system based on it is upheld and defended. "Is not all property," it is asked, "either directly or through its owner protected by the State or Sovereignty?" "Do not all persons owe allegiance to the State?" And if so, "Why should not all persons and property contribute to the requirements of the State for revenue, in proportion to their ability?"

But popular and plausible as are the assumptions and arguments on which the existing system of local taxation has been built up, made operative over the persons, property, and business of more than forty millions of people, and fortified by a vast amount of adjudication, it will require but little investigation and analysis to satisfy any one who can divest himself from the influence of old prejudice, of the truth of the following propositions : *First*. That the assumption that it is necessary to assess everything in order to tax equitably involves an impossibility,

and therefore unavoidable inefficiency, injustice, and inequality in administration. *Second.* That as popularly used in respect to matters pertaining to taxation, the term *property* is made to apply equally to entities and to symbols, or non-entities, which in itself is an absurdity; and, *finally*, that the outcome of all this is a system which powerfully contributes to arrest and hinder natural development, to corrupt society, and is without a parallel in any country claiming to be civilized. And as further illustration of this latter point it may be added that notwithstanding the recent discussions, the whole subject is yet so unfamiliar to the people of the United States that probably nine out of ten of our best informed readers, and even of the members of the bar, take it for granted that the method of assessing and collecting taxes for local and municipal purposes is substantially the same all the world over, and would be greatly surprised to find on investigation that the American system is one of the things exclusively American and so little esteemed by the people of other countries as to be for this reason strictly "non-exportable."

These assertions may appear unwarrantable to some men, and as testifying of conceit rather than of knowledge; but whether this be so or not, a consideration of the following facts will help to determine.

In the incipient stages of society, where property consists almost or quite exclusively of things tangible and visible, lands, buildings, slaves, cattle, ships, household effects and implements, the theory that equality of taxation requires the assessment of everything was not impracticable in application, and under most circumstances afforded but little opportunity for the working of injustice in respect to arbitrary discriminations in assessing. But its full execution must, nevertheless, even in the most simple condition of society, have been always attended with great difficulties. There is nothing which men more abhor in government than personal inquisitions, and in the language of a committee of the French National Assembly of 1789 (of which Talleyrand and Laroche foucauld were members), the recognition and practice of such inquisitions by any government is something inconsistent with and antagonistic to the maintenance of a free people. Again, had nothing

come down to us in English history from the time of Edward III. other than one of the assessment rolls of the period (when there was little or no property capable of taxation but what was visible and tangible), the evidence would be complete that the mass of the English people were but little better than slaves, for the mere inspection of such rolls shows that their preparation involved such an inquisitorial scrutiny into domestic life, such a seeing, handling, and valuation of everything in the household, from the utensils of the kitchen to the furniture of the bedchamber, as to make personal freedom or a sense of personal self-respect on the part of the tax-payer who submitted to such a scrutiny, almost an impossibility.* And in this connection it is also pertinent to call attention to the circumstance that the famous insurrection of English yeomen and peasants under Wat Tyler in the reign of Richard II. (the successor of Edward III.), originated directly in the attempt of a tax-gatherer or assessor to ascertain by brutal personal examination whether a daughter of Wat Tyler had attained the age of puberty, and in consequence had so become liable to enrolment for capitation assessment.

But to whatever extent simplicity in the elements of property simplified the original methods and ideas in respect to local taxation, the problem involved rapidly changed, and became more and more intricate as increasing population and increasing commerce and intercommunication between States and communities required that property should to a great extent be put into a condition to admit of being readily mobilized, in order to allow of its most profitable use and application. Thus a large proportion of what is to-day popularly termed "personal property" in every highly civilized State is of the most intangible character, and in great part invisible and incorporeal; such, for example, as negotiable instruments in the form of bills of exchange, State, municipal, and corporate bonds, and the multiplied forms of evidence of indebtedness;

* A copy of an assessment roll of the time of Edward III. 1329 - 1376, given by Lingard in his History of England, contains a list of articles down to a towel and a bench; and the historian notes that in the returns are carefully mentioned the very rooms in which the articles were found, and that there were no exemptions except one suit of clothes for each person, which were supposed to be included in the tax levied on the polls, or the person.

all of which, if entitled to the name of property, is through a great variety of circumstances, constantly fluctuating in value ; is offset by other indebtedness, which may not be the same one hour with another ; is easy of transfer, and by simple delivery is, in fact, transferred continually from one locality to another, and from the protection and laws of one State to the sovereignty and jurisdiction of some other. In the absence of the power of clairvoyance, therefore, any attempt on the part of an assessor to obtain independent cognizance of such commercial and financial instrumentalities for the purpose of valuation and assessment is, on its face, an impossibility ; and if the co-operation of the person to be assessed is to be invited or relied on, two of the most powerful influences that can control human action, love of gain or the unwillingness to part with property, and the desire to avoid publicity in respect to one's private affairs, immediately unite to oppose and prevent such co-operation.

A resort to personal inquisition, with an accompanying machinery of oaths, "dooming," and penalties is next in order ; under which the State, ignoring all rules enacted for the protection of debtors in the ordinary collection of debts, pursues the citizen for the collection of what it claims to be a debt, with no better result in nine cases out of ten than the impairment of the public sense of both justice and morality.*

But this statement very far from embraces all the difficulties inherent to this popular theory of the necessity of taxing everything in order to insure justice and equality. A further very large proportion of the so-called personal property of the country, which is *not* invisible or intangible, and which requires

* "It is claimed that each individual owes the State annually a certain sum of money in the way of taxes proportioned to his entire property. If he voluntarily pays, he escapes arbitrary measures. If he declines to pay or tries to avoid payment, he has no just cause to complain if he is regarded in the light of a criminal, or if the same arbitrary measures are used to collect his tax as if it were a debt owing by one citizen to another.

"But let us examine this averment. If the defaulting tax-payer is to be regarded as a criminal, and as such placed in the worst possible light, he certainly ought not to be deprived of the privileges of a criminal ; which are a right to a public investigation according to the rules of evidence adopted by free and enlightened communities ; a right to be heard before condemnation ; and the right to be presumed innocent of having property subject to taxation until the fact is ascertained otherwise by legal proof. But under the existing tax laws, we do not accord to the tax-payer

only ordinary perception for recognition, is in the nature of instruments or subjects of commerce between States and nations; such as railroad cars, ships, steamboats, immense stocks of raw or manufactured products accumulated in store for the sole purpose of movement. What shall be the *situs* of all these things for assessment? If actual location is to be determinative, then a product of grain or merchandise, which, in movement for a market or conversion into other forms, may happen to be in Illinois in April, in Ohio or Massachusetts in May, in New York in July, in New Jersey in August, and in Connecticut in October, will be liable to five separate taxes in one and the same year; for the laws of each of these States

the privileges of a criminal; for no tax can be assessed on a large proportion of the personal property of the State, according to any rules of legal evidence that any common law court would adopt. No assessor, under the laws of New York, in assessing personal property can act judicially. The law gives him no power to obtain legal testimony of a character that is admissible in a court; he must act the part of an arbitrary despot against an inculpatated tax-payer, or not act at all, and his conclusions for acting must be reached at best by the testimony of those who have no means of knowing anything, in a legal sense, about the subject-matter under investigation. It seems clear, therefore, that any attempt to tax without legal evidence, is an act of usurpation or despotism, wholly antagonistic to the principles of a free government, and that it is a mockery to characterize such acts as, in any sense, judicial proceedings.

"Nor does the right to reduce or regulate the assessment by the oath of the tax-payer relieve the law in any degree of its unequal and despotic character; for every individual holding public office in the United States knows that oaths as a guarantee of truth in respect to official statements have ceased to be of any value. The assessments made according to the oaths of parties, furthermore, are not made according to legal evidence, upon examination and proofs; but according to the will and secret caprice of each tax-payer, instigated by his selfishness, and the natural depravity of human nature. Each tax-payer, under the present rule, becomes therefore the interpreter, not only of the law, but of the fact, and makes a secret interpretation of both, and we have as many interpreters of the law as there are numbers of tax-payers; and also an indefinite multiplicity of assessors; for each person who unfairly reduces his own assessment arbitrarily assesses thereby some other of the community for the difference.

"Could or would any people apply the same rules for the collection of debts? Is there any one who has so much confidence in human nature that he will propose a law, that a person who is sued shall be discharged from all claims of indebtedness if he will make oath, interpreting both the law and the fact himself, that he owes the claimant nothing? Is it believed, that under tariff laws, the government could get sufficient revenue to pay for its collections, if the importer was permitted to offset debts against the value of his goods; or if the law was peremptory that his oath alone should be given, and that there should be no legal examination, inspection or proof of the value or character of the importations?" — *Second Report Commissioners of New York, 1873.*

require their assessors to return for taxation all such property as at the periods mentioned may be actually within the sovereignty and jurisdiction of the taxing authority. On the other hand, if the fiction of law that personal property follows its owner is to govern, then all such property may be taxed *where it is not*, and where no expense has been incurred by the locality for its protection, and be exempt from taxation *in the place where it actually is*, and where it shares in the benefits that flow from the protective expenditures, — police, fire department, etc., — which are incident and necessary to the locality. And in proof that such a supposition, which seems on its face to be an absurdity, is a matter of constant experience under our so-called American system, it may be stated that at present, as for some years past, Houghton & Co., the well-known publishers, are regularly taxed in Cambridge, Mass., the place of their residence, for so much of their stock in trade as is kept in store and permanently employed in business in New York City, although it is admitted that the same tangible, visible property is at the same time regularly taxed by the New York authorities; and furthermore, that when an appeal against this injustice was made to the Massachusetts Tax Commissioners, the decision rendered was, that under existing Massachusetts laws, the plundered tax-payer could have no remedy, except by change of business or change of (State) residence. Reference may be also made to the reports of the Commissioners of Taxes for New York City, which admit that cases are continually occurring in that city where of two separate but corresponding and contiguous lots of merchandise, one will be taxed and the other exempt from taxation according as their owners are respectively residents or non-residents of the municipality. Again, if a foreign banker subscribes to any of our State or municipal loans, the bonds or other evidences of indebtedness which he receives in exchange for his money are exempt from taxation by reason of his non-residence; but if a resident widow, orphan, or maimed soldier, be moved by the desire for security to purchase a little of the same loan, the small rate of interest which such investments generally carry will be made still smaller, to all such persons, by reason of an annual tax of from one per cent. to two, three, or a greater percentage imposed

on the holders for the simple reason that they are residents ; although the protection afforded to the latter is in no degree different from or greater than that afforded to their more fortunate and rival foreign competitors, who reside where such taxes are not imposed ; all of which is equivalent to saying officially that whenever an American loan, particularly desirable for trust investments, is created, it shall be sacredly reserved for foreigners, or that bad portion of our own citizens who have no scruples about cheating the assessors. Local subscriptions to local indebtedness, with the increase of interest in the locality which would necessarily follow, are therefore discouraged, while to the American citizen residence is made an offence and coupled with a penalty.

As a further help to reasoning on this subject, it is also important to call attention here to the circumstance, that the distinction between real and personal property is to a very great extent, an artificial and not a natural distinction. Thus, for example, shares in the national debt of France (as well as stock in the Bank of France),—instrumentalities which in the United States would be regarded as personal property in its most typical form,—may by French law be regarded as real estate, and as such administered upon. Again, before emancipation in the United States, slaves (which by the Federal Constitution were recognized as persons) were in some of the States declared by law to be real estate ; and to-day in Wisconsin, the one species of property which is especially typical of mobility, and is of no value apart from capability of motion, namely, the rolling stock of railroads, is also by law made real estate. Equally nice is the distinction in the case of machinery. Unattached or movable, it is personal property ; screwed or fastened permanently to the floor or wall, it becomes real estate. The attempt, therefore, to recognize in a system of laws a distinction which is purely arbitrary, and which the thirty-eight sovereign States of the Union may alter at pleasure,* is very likely to give a

* With regard to the statute law on the subject of taxation, "it is," says Mr. Hilliard, in the preface to his recent work, "*Law of Taxation*," "as voluminous as the constitutional provisions are few and concise. With a general similarity, the laws of the different States are very diverse ; and so numerous and frequent are the statutory changes, that the author disclaims any responsibility for the implied statement, that the law of any particular State, however recent, is now in force."

general result somewhat akin to that obtained by the artist, who in painting a landscape selected a cow as his fixed point of perspective. If the cow had remained quiet, the picture might have been satisfactory, but as it was, the details were not harmonious.

Consideration is next asked to this point: To tax the instrumentalities or objects of commerce in one locality, and to exempt the same from all direct taxation in another, will clearly not permit the former to enter a common market on an equal basis for competition with the latter. And yet this unjust discrimination is exactly what does result from the attempt of the majority of the States in the Federal Union to tax all such instrumentalities or objects under the general head of personal property, and the exemption of the same classes of property from any corresponding assessment in the State of Pennsylvania, in the British Provinces of North America, and in all foreign countries with which the United States enter into extensive commercial intercourse and competition. Boards of trade and commercial conventions may pass "deploring" resolutions concerning the decay of American commerce, and committees of Congress may continue to investigate the same subject, but so long as ships engaged in the carrying trade on the free ocean, and owned in Montreal, Quebec, St. John's, England, France, Germany, and Holland, are not directly taxed, and ships engaged in competition in the same business and owned in Portland, Boston, New York, Baltimore, New Orleans, and San Francisco, are taxed — and that heavily — commerce will incline to walk in the paths which are made easy and profitable to it. "The difference in the cost of a single penny in laying down grain at Liverpool," says the President of the New York Produce Exchange, "may determine the question whether millions of bushels shall be supplied by this country, or shall be drawn from the ample fields of Hungary or Southern Russia."*

And finally, in regard to so much of the so-called personal property as is visible and tangible, and not included under any of the heads above mentioned; such as articles of personal adornment, clothing, furniture, works of art, musical instru-

* Letter of Franklin Edson, President of the New York Produce Exchange, on the Reduction of Canal Tolls, April 17, 1875.

ments, books, &c., shall we assume that we have here a class of articles on which it is desirable to levy taxes? Of course the popular answer will be most decidedly in the affirmative; for are not all these objects, it may be asked, the very ones best fitted to sustain taxation, and are they not in great part also luxuries rather than necessities? But how, it may be rejoined, are you going to tax them? for it is reasonable to suppose that if they are to be taxed, it is to be by a system that works equitably, and not by a system which by taxing A, and letting B, C, and D escape, brings the law into contempt, and by making the sense of the commission of a wrong on the part of the State the excuse for the commission of another wrong on the part of the individual, gradually undermines the morality of a community that does not wish to be dishonest. Probably the advocate of the infinitesimal system will continue to answer, "Let a law be made which will compel every person possessed of such description of property to make and hand in to the assessors a schedule, and certify to its correctness in respect to items and value by oath." But such substantially is already the law in most of the States, and its observance and execution amounts to nothing. Thus in Ohio the law subjects to taxation all visible property above fifty dollars in value, without any offset of debts; and yet the official reports of the auditor of the State show that the total number of annual assessments in Ohio do not amount to *one tenth* of the number of the adult population; or, what is the same thing, that only one person in ten of the adult population of this great and rich State of Ohio has any property whatever — real or personal — in excess of fifty dollars, which the eye of the law can discover; although investigation will show that it is impossible for a person to dress respectably or live decently, outside of a poor-house, who has not always at least double this amount of property in his possession. Every intelligent assessor in Ohio, when questioned in respect to the law, will answer, that it cannot be executed with even an approximation to exactness, and that a serious attempt to execute it would cause a political revolution; and yet such is the strength of popular prejudice, that any attempt to repeal this law would probably be unsuc-

cessful. Some years ago a commission reported to the legislature of Illinois a new scheme of taxation, in which among other things they proposed that every woman of "full age and sound mind," — either directly or by her representative, — should annually return to the assessors a statement of the value of all the jewelry, household furniture, and "all other property" in her possession; but their recommendations never received any higher consideration from the public than that of being denounced and laughed at. And most naturally; for what woman would tell her age, or the amount and value of her jewelry and finery, and more especially to a stranger, invested with a brief official authority as an assessor, and serving the State at the rate of two dollars per day? In short, no people — men no more than women — can or will endure the vexing, impertinent, personal inquisition necessary to carry out a system of taxation based on the principle that in order to tax equitably it is necessary to assess everything; and yet unless such a system is carried out in all its details, what becomes of the equality claimed for it?

So much, then, for the almost insuperable difficulties having their origin in the nature of things growing out of the correlations of modern civilization, which always must be attendant on the attempt of any sovereignty to tax everything over which it has dominion or jurisdiction. Let us next consider how the situation in the United States in respect to local taxation, already thus made difficult by reason of natural causes, has been further hedged round as it were with embarrassments by the action of the Federal Courts.

In the first place, we have repeated decisions of the U. S. Supreme Court (*McCulloch v. Maryland*, 4 Wheaton, 451; *Weston v. City of Charleston*, 2 Peters, 449), that all agencies or instrumentalities of the Federal government of every name and nature, are exempt from State taxation; and a law of Congress (June 30, 1864), which specially makes applicable what the Supreme Court had before declared to be constitutional law, to a certain class of Federal instrumentalities, namely, all representatives of value, of whatever name or denomination issued under act of Congress, — bonds, coupons, national currency, U. S. notes, treasury notes, fractional cur-

rency, certificates of indebtedness, etc., etc. Here then, making allowance on the one hand for so much of the national debt as has passed into the possession of foreigners, and on the other for the circumstance that what of it remains in the possession of our own citizens is undoubtedly made the agency whereby at least an equal amount of other property — surplus of savings-banks, and assets of fire and life insurance companies, etc., — is successfully enabled to evade primary taxation, we have probably one sixth of the personal property of the country effectually placed beyond the reach of State assessment. There still lingers a feeling among the masses, that if Congress would so enact, this exemption of United States instrumentalities from taxation need not be; but if any person will carefully consider the words of Chief Justice Marshall in passing upon this question, namely, “*That the power to tax involves the power to destroy,*” and that if the right exists to tax at all “*it is a right which in its nature acknowledges no limits,*” he will probably come to the conclusion that Congress could not delegate to the States this power of impairing Federal sovereignty if it would, and should not if it could.*

Second. We have a denial to the States of the power to tax by direct assessment, license, or stamps, imported goods in their original packages. It took two decisions of the U. S. Supreme Court to restrain the Massachusetts tax officials from assuming and exercising this power. The first, made many years ago, in the case of *Brown v. Maryland*, was regarded as

* “In the celebrated case of *McCulloch v. Maryland* (4 Wheaton), when the question involved was the right of the State to impose taxes upon the operations within its limits of the Bank of the United States, created by authority of Congress, Chief Justice Marshall used the following language: “If we apply the principle for which the State of Maryland contends to the Constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government, and of prostrating it at the foot of the States. The American people have declared their Constitution and the laws made in pursuance thereof, to be supreme; but this principle would transfer the supremacy, in fact, to the States. If the States may tax one instrument employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax patent rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States.”

of no account; but the second, given in the case of *Austin v. Low*, in 1872, admitted of no misinterpretation. Yet, so reluctant were the Boston assessors to have the unlimited power necessary to enforce unlimited taxation abridged in any degree that they proposed to petition Congress to nullify the Court decisions, by enacting that the States might tax imported goods like general merchandise if they would; unmindful of the fact that the tenth section of the first article of the Federal Constitution expressly forbids Congress from making any such enactment.*

Third. We have the fiction of law, "that personal property follows the owner" for purposes of taxation, broken in upon in respect to all personal property represented by ships, by the decisions of the U. S. Supreme Court (*St. Louis v. Ferry Co.*, 11 Wallace; and *Hayes v. Pacific Mail Co.*, 17 Howard), that the *situs* of a vessel for State taxation is only at the home port where she is owned and registered, and not where the vessel or owners may happen to be.

Fourth. The decision of the U. S. Supreme Court (*State Tax on Foreign-held Bonds*, 18 Wallace), that public securities have a *situs* where found, and cannot be elsewhere regarded as property subject to taxation, pretty effectually exempts from State taxation all negotiable instruments, — State, municipal, railroad, and other corporate bonds; — inasmuch as to remove such property from the territory of a State, at the same time removes it for all purposes from the State's jurisdiction; as "*the tax laws of the State*," according to the Court, "*can have no extra-territorial operation*."

Fifth. In the case of *Tappan v. Merchants' National Bank* (19 Wallace) the U. S. Supreme Court (1873) decided in the case of shares in National Banks (and inferentially in respect to shares in all other similar corporate bodies), that when a citizen of one State purchases such evidences of property in another State "*his money invested in the shares is withdrawn from taxation under the authority of the State in which he resides*,"

* "No State shall, without the consent of Congress, lay any imposts, or duties, on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the treasury of the United States." — *Constitution of the United States*, Section 10, Article 1.

and submitted to the taxing power of the State where, in contemplation of the law, his investment is located." And in conformity with, and following this decision, the Supreme Court of New York has since held (1875) that certificates owned by a resident of New York, of stock in corporations created by and under the laws of other States "are not in themselves property" in New York, but "simply representatives of capital or property employed in business in other States, and therefore not taxable in New York."*

In addition to these decisions of our highest tribunal, which irrevocably break in upon and demolish so much of the old practice of local taxation in the States, other points involving equally radical innovations are certain to come up for adjudication at no distant day; such, for example, as the limitation on the taxing powers of the States created by that clause of the Fourteenth Amendment of the Constitution of the United States, "*Nor shall any State deprive any person of life, liberty, or property without due process of law*"; or that other clause, "*Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State*," the future application of which to the limitation of taxation by the States was foreshadowed in the celebrated case of *Green v. Van Buskirk* (5 Wallace, 307); or the practical application of the decision in the same direction by the United States Supreme Court in the case of the *State Freight Tax* (15 Wallace), "That the constitutionality or unconstitutionality of a State tax is to be determined, not by the form or agency through which it is to be collected, but by the subject upon which the burden is laid"; and also the question of extra-territorial taxation involved in the assessment of inter-state contracts as property, and other similar questions. It is, of course, impossible to predict what will be at first affirmed to be Constitutional law in these future cases; but it can be certainly affirmed that the spirit of the age, and the necessity of freeing all inter-state exchange and commerce from all impediments will sooner or later demand that freedom in the highest sense shall be the rule governing the

* The stocks directly involved in this decision were the Chicago, Rock Island, and Pacific; Milwaukee and St. Paul; St. Louis, Alton, and Terre Haute, and the Wilkesbarre Coal; but the principle applies of course to stocks of all foreign corporations held by citizens of New York.

movement of all property equally with the movement of all persons.

Such then is an imperfect exhibit of the antiquated, accidental, unjust, demoralizing, and absurd method, — not worthy of being called a system, — adopted by all the States of the Federal Union with a single exception, for raising annually from the people between two hundred and fifty and three hundred millions of dollars, — a burden which twenty years ago would have seemed impossible for the nation to sustain in addition to meeting the requirements for Federal expenditure.*

* To show that this characterization has in it nothing of exaggeration, attention is here asked to the following novel method by which Hon. George H. Andrews, one of the Commissioners of Taxes for the City of New York, strikingly contrasted and illustrated in 1874 to a Committee of the Legislature, the inequalities and incongruities of the existing tax laws of New York.

A	has \$ 100,000 of imported goods,	and is <i>exempt</i> .
B	“ miscellaneous goods,	“ <i>taxed</i> .
C	“ goods consigned,	“ <i>exempt</i> .
D	“ goods owned,	“ <i>taxed</i> .
E	“ goods manufactured in New Jersey,	“ <i>exempt</i> .
F	“ “ in city,	“ <i>taxed</i> .
G	“ goods for which he borrowed capital on United States Bonds,	“ <i>exempt</i> .
H	“ goods which he sold United States Bonds to pay for,	“ <i>taxed</i> .
I	“ in ships plying from this port, but registered in Boston,	“ <i>exempt</i> .
J	“ in ships plying in the Pacific, but registered here,	“ <i>taxed</i> .
K	“ in mortgages on New Jersey property, interest paid in Jersey City, and mortgages deposited there,	“ <i>exempt</i> .
L	“ in mortgages on city property,	“ <i>taxed</i> .
M	“ money in his pocket,	“ <i>exempt</i> .
N	“ “ bank,	“ <i>taxed</i> .
O	“ certified deposit in Sub-Treasury,	“ <i>exempt</i> .
P	“ “ bank,	“ <i>taxed</i> .
Q	“ specie in the Assay Office,	“ <i>exempt</i> .
R	“ “ his safe,	“ <i>taxed</i> .
S	“ check on United States Treasury,	“ <i>exempt</i> .
T	“ “ bank,	“ <i>taxed</i> .
U	“ Treasury notes,	“ <i>exempt</i> .
V	“ Promissory notes,	“ <i>taxed</i> .
W	“ of United States Bonds,	“ <i>exempt</i> .
X	“ of State or City Bonds,	“ <i>taxed</i> .
Y	“ in certificate of indebtedness of United States,	“ <i>exempt</i> .
Z	“ “ “ a corporation,	“ <i>taxed</i> .

“And if the alphabet had been longer my statement had been stronger.”

That the system is a success in the sense that it is effective for raising the required revenue must be admitted ; but the old Asiatic system, which limited its exactions to a few individuals, and sent the public executioner to keep company with the collector, was equally a success, and far more simple and economical. That the existing system has also many defenders and advocates must also be further admitted ; but this phenomenon admits of explanation, partially on the principle, that in all cases of fraud upon the public, it is only necessary to get up a *quantum sufficit* of any wrong, to make it certain that the abomination will powerfully defend itself ; and partially for a reason similar to that which induces the Esquimaux and the Guinea negro, who have never known anything different from their natural surroundings, to respectively imagine their own country and climate to be superior to any other.

On the other hand it is undoubtedly a fact, — and one most encouraging, — that by almost all thoughtful men, who have felt sufficient interest in the subject of local taxation to examine it in the light of the recent reports, investigations, and court decisions, the conclusion has been arrived at that the American system as it exists at present in the majority of the States is too imperfect and too adverse to the general public interests to be either defended or allowed to continue for any great length of time without radical changes ; and yet at the same time this other fact is equally certain, that out of the very considerable number thus convinced, — which within the knowledge of the writer includes many leading members of the judiciary, of the bar, and of the corps of local fiscal administrators in all parts of the country, — very few have made progress enough in their investigations and reasoning to come to any definite opinion, either as to what new plan should be at once substituted for the existing system, or in what gradual manner it is practicable or expedient to begin the work of reform. “ If we were to commence *de novo*,” writes an eminent member of the bar of one of the New England States, “ I would oppose most earnestly the adoption of any system of local taxation analogous to that which we have at present ; but in view of existing precedents, prejudices, and the stereotyped way of doing things, I hesitate about attempting radical innovations.”

An ex-chief justice of one of the leading States of the West, under date of December, 1875, also thus expresses himself, "Our tax system, I was going to say, is as bad as possible; but really we have no system. Our tax laws are mainly bad. Federal taxation, to a large extent, is laid for private purposes, and public offices and public sentiment is debauched by it. What can the courts do to better this condition of things? They may punish a rascal now and then, but bad taxation is apt to corrupt the officers of justice, including in some instances even the judges. On the other hand, if reformers are to address themselves to State Legislatures, what do they encounter? 1st. A greedy hoard of leeches who would have the tax laws shaped to benefit themselves and not the country. 2d. A majority of the legislature with so little knowledge of the principles of taxation, that they willingly present the breasts of themselves and their constituents for the leeches to fasten upon, under the pleasing delusion that life blood is to be imparted by them instead of being drawn away. And these are not all the difficulties, for much of the legislation that is inspired only by correct motives is vicious because the subject is not understood by those who would deal with it."

Under such a condition of things one inquiry which naturally suggests itself is: Are there any precedents or examples in the past, of the removal or reform of national systems of taxation which had become oppressive, from the consideration of which any profit can be gained? And in answer it may be said, that there are at least two examples, in which the historical details of experience, although not as yet specially gathered up and recorded, can be traced with undoubted accuracy; namely, the experiences of England and of France. In the latter country, feudalism, previous to the revolution of 1789, had come to find its expression almost exclusively in the claims on the part of the various and multiplied representatives of authority—nobility and clergy—to regulate taxation—in respect to both imposition and exemption. Taxation was, therefore, everywhere, in the highest degree arbitrary; the infinitesimal, inquisitorial, dooming, penalty system, was carried out in perfection; feudal personal services were compounded for frequent direct and indirect periodical taxes,

payable in money or commodities ; and the only rule of practice, which in different districts could prefer any claim to uniformity, was the rule of inequality of assessment and harshness and cruelty in collection. On nearly every estate or seignior, in addition to a great variety of direct taxes on persons and property, the various operations involved in production and consumption were as far as possible made the occasion for new and repeated assessments. The tenants, or vassals, were bound to grind their corn at the mill of the seignior only ; to bake their bread exclusively in his ovens, and press their grapes and apples exclusively at his presses, and for every such industrial conversion a toll or tithe was collected. Movements of persons and property from one town or district to another, always involved taxation ;* and every sale or transfer of property carried with it a fine, to the extent of one-eighth, and sometimes one-sixth of the entire equivalent received in consideration. Arthur Young, who travelled in France in 1787-89, says that even at that time, the very terms used to designate the taxes imposed on the peasantry of France, were in many instances untranslatable into English ; and from a long list of such terms as he has recorded very few can be found defined in any ordinary French lexicon. In order, however, in some degree to satisfy curiosity as to the nature of these abominations, it may be mentioned, that one of the local taxes of Brittany, which remained in force down to 1789, and was known as the "*silence des grenouilles*" was a money payment, in lieu of an ancient feudal obligation

* In Massachusetts and other States, which adopt the fiction of law, that personal property cannot be separated from its owner, visible, tangible chattels, as cattle and merchandise, etc., are liable to be taxed successively in one and the same year ; first in the States where they actually are and by whose laws they are protected, and again where the owner resides, if such residence be in a different State. But in France, under the ancient *régime*, they improved on this, by holding that a man (at least for a time), could not separate himself from a residence once adopted, but remained there for taxation, although he might have actually and permanently left it. Accordingly, therefore, they taxed all persons leaving their domiciles for a certain time in the seat of their former abode, — namely, farmers and laborers for one year, and all other taxpayers for two years, provided the parish to which they removed was within the same district ; but if otherwise, then farmers were to pay for two years, and all other persons for three years, so that a man under all circumstances in France, previous to 1789, would have had to pay double taxes, for from one to three years, as a penalty for changing his dwelling.

incumbent on the residents of marshy districts, to keep the frogs still, by beating the waters, that the lady of the seignior, "when she lies in," might not be disturbed; while another exaction, even more outrageous, was the tax known as "*cuissage*," which was paid to the seignior on the occasion of every marriage on his estates, as a substitute for his ancient and formerly acknowledged right to the single possession before marriage of the person of every female, the daughter of any of his serfs or more dependent vassals.

Out of such abuses the only possible issues were national death or radical reforms; and the latter came in the form of revolution. And to what extent the grievances of taxation were the causes of the Revolution is indicated by the circumstance, that one of the very first acts of the National Assembly of 1789 was to repeal and utterly wipe from the statute book all inquisitorial taxes of every nature and character, as well as all "prescription of oaths"; both being stigmatized in the report of the Committee as inconsistent with the maintenance of a free people. And so deep and lasting, moreover, has been the terrible lesson of past tax-experience to the French people, that from 1789 to the present time,—all through the financial embarrassments consequent on the wars of the first Napoleon, and more recently, on those resulting from the German invasion,—there has not been so much as a popular thought or suggestion of adopting any system for raising internal or local revenues, which in any degree approximates to the existing American system, or to any system involving personal inquisition for its execution.

What local taxation was in England in the time of Edward II. has been already indicated. But how thoroughly the governing classes, at least in England, had in the time of William and Mary, come to understand the nature and demoralizing influences of inquisitorial taxation, and how prompt they were to abate popular grievances, which in France were allowed to accumulate, is shown by the act passed by the House of Commons in 1698 for the abolition of what was known as the "*hearth money*" (a tax of two shillings upon every hearth, first imposed in the reign of Charles II.), an extract from the preamble of which reads as follows: "Whereas, his Majesty

having been informed, that the revenue of hearth money was grievous to the people; and whereas the Commons do find *that the said revenue cannot be regulated*, but that it will occasion many difficulties and questions; and that it is, in itself, not only a great oppression to the poorer sort, *but a badge of slavery upon the whole people; exposing every man's house to be entered into and searched at pleasure by persons unknown to him; therefore,*" etc., etc. And as a further illustration of how early English freemen came to perceive the just limitations of the taxing power, and to abhor the exercise of inquisitorial and arbitrary proceedings, it may be mentioned that one of the earliest laws of the Massachusetts Colony was that "*no man shall be rated for any estate or revenue he hath in England, or in any foreign parts, till it be transported thither,*" thereby plainly recognizing the principle laid down by the United States Supreme Court nearly two hundred and fifty years afterwards, that "*property lying beyond the jurisdiction of the State is not a subject upon which her taxing power can be legitimately exercised*"; and also, that in the first provincial codes of Pennsylvania, framed by Penn and his associates, special care was taken to confine taxation to land and a very few articles of personal property of a visible character; and to exempt from taxation merchandise and ships, and all representatives of property, as debts, bills and accounts, easy of concealment. During the eighteenth and nineteenth centuries, down to 1842, reforms in taxation in Great Britain were very gradual, and in not a few instances the result of court decisions rather than of action by Parliament; the tax on windows, imposed in 1695, and which was advocated at the time on the ground that the assessor might determine the amount of the tax without passing the threshold of any house, remaining in force until 1851. Since 1842, however, reform in every department of British taxation has been rapid and intelligent; and although the British system as it exists to-day is the subject of much domestic complaint — as all systems that can possibly be devised ever will be — it is nevertheless probably unequalled for simplicity, for efficiency in administration — all machinery of oaths, affidavits, listings and inquisitions (as in France) being wholly discarded, in-

come tax excepted ; and for the ease and economy with which it is made the instrumentality for collecting enormous annual revenues from comparatively few objects ; and all this with an entire exemption of a very large portion of the population from any direct contact with the tax assessors and collectors.*

What has already been effected, and what further may be expected in the sphere of tax reform in this country through the agency of the Federal Courts, i. e. in defining and limiting the powers of the States, and in making operative the 1st section of Article 4, and the Fourteenth Amendment of the Constitution of the United States against the exercise of arbitrary power, has been already briefly pointed out. But beyond the action of the courts, which are naturally slow, conservative and unwilling even to appear to invade the province of legislation, no radical improvement in our existing local tax systems as the result of legislative action can be expected until the general public, and more especially that part of it which makes and administers the laws, in some way obtain more definite and intelligent ideas than they now possess respecting the nature, object, and scope of taxation, and especially concerning the manner in which taxation once imposed diffuses itself and becomes a real and ultimate burden on objects far other than those which primarily sustain it.

And one of the first and most important things which it is desirable that the public in this educating process should be brought to clearly comprehend (and which, absurd as the averment may seem), they certainly do not now comprehend, is, that *nothing cannot be something* ; or, in other words, that *property is a physical actuality*, which has become valuable,

* "The study of the subject leads us to the conclusion, that the taxation of the United Kingdom is the most scientific, the most economical in collection, and the least onerous to the people of any in Europe. The Englishman pays no poll tax, no land tax, no salt tax, no taxes on any of the necessities of life, except it be on beer, on tea, and sugar." Sugar is now exempt. "Our taxes on successions and transfers of property are lower than those of France. Our customs are levied on five or six articles, our income tax chiefly affects those who possess realized property, our excise is a tax justly levied on the vices or indulgences of the people. We question, therefore, whether any country ever suffered less than England now does from the burden of taxation." — *Edinburgh Review*, April, 1870, p. 201.

or property, through the application of some form of labor; and therefore, that a title to property, or a representative of property can no more be property than a shadow can be a substance. And if this be true, then it would seem to follow of necessity that "the act of making debts, bonds, contracts, verbal or written, notes, book-accounts, mortgages, warehouse-receipts, titles, certificates of stock, or any form of saleable and transferable rights, is not a creation or production of any new property, but simply an exchange by contract or operation of law of the rights or titles of parties in pre-existing property, and that any tax on any of these rights or titles is only another form of burdening the property which is the subject of the rights or titles." — *Isaac Sherman*. To which it may be further added, that if the tax is levied on any of these representatives or titles in any other State than the one where the property is located, it would clearly seem to be an extra-territorial tax, and therefore, by the decision of the U. S. Supreme Court, unconstitutional; and if levied on rights or titles within the same jurisdiction as the property itself, which is there also taxed, it is simply double taxation on one and the same thing, or an odious discrimination against property which may happen to be covered by such titles.

On the other hand let us consider for a moment the converse of this proposition, namely, *that titles are property, and as such ought not to be exempted from taxation*. If this is so, then it would seem to follow that, by making titles, we can make property; and that when a man mortgages his farm for ten thousand dollars, the community have ten thousand dollars' worth of real estate, and ten thousand dollars' worth of personal property, when before the execution of the mortgage there was only the specified value of the real estate. Again, if the title is the property, then either the actuality is not property where it exists, or else we have two things occupying the same place at the same time.

And here another illustration may be given of the fact already referred to; that without specific legislation, important reforms in the principles and methods of local taxation are being effected through the agency of the courts; for while this article was in the course of preparation, the very subject

under discussion (are titles and credits property, and as such proper subjects for taxation?) came up before the Supreme Court of the State of California for decision, and was decided almost unanimously — only one out of five dissenting — in accordance with the views above taken. The Constitution of California, in common with the Constitutions of most of the other States, provides “that taxation shall be equal and uniform throughout the State,” and “that all property in this State shall be taxed in proportion to its value, to be ascertained by law.” The Hibernia Savings and Loan Society of San Francisco resisted, under these constitutional provisions, the taxation of mortgages given to secure the loan of property, on the ground that to tax a certain property, and then to tax a mortgage on it, which mortgage is not in itself property, but like a deed or lease, is a species of conveyance or acknowledgment of a conditional interest or right in the property, was not equal and uniform taxation, but an unequal and double tax on the property mortgaged. The Court met the case fairly and squarely, the language of the Chief Justice (Wallace) being reported as follows: “Mere credits are a false quantity in ascertaining the sum of wealth which is subject to taxation as property, and in so far as that sum is attempted to be increased by the addition of those credits, property taxation based thereon is not only merely fanciful, but necessarily the unconstitutional imposition of an additional tax upon a portion of the property already once taxed.” That the practical effect of the taxation of loans and credits is to impose a double tax on the debtor has never been disputed by any who have taken pains to investigate the subject, but as the point is one that even tax-officials and law-makers generally do not admit, if indeed they comprehend it, the following further language of the Chief Justice is worthy of attention. He says: —

“The taxation thus imposed nominally upon credits having resulted in the double taxation of the money, the additional tax must of course be paid by some one. And here all human experience, as well as the settled theories of finance concur that it is not the lender who pays, but the borrower. The borrower is the consumer. The interest which he pays to the lender is the prime cost of the delay for which he has contracted. If the government, by the imposition of addition-

al taxes, increase the cost, the borrower, being the consumer, must pay for it."

There is another portion of this California decision that should not be overlooked. The California code, in defining personal property as a subject for taxation, in common with the tax codes of most of the other States, specified "money, goods, chattels, evidences of debt, and things in action" as personal property, which definition would, at first sight, certainly seem to include mortgages as proper subjects for State taxation. But the Court, through Justice McKinstry, who delivered its opinion (the Chief Justice's opinion being in concurrence), referred to this clause of the code as "an attempt" merely to include *choses in action* in the definition of property, and declared that to make it the duty of assessors "to assess all things in action is to give a construction to the Constitution which must lead to the grossest absurdities." He then enumerates at length many of the absurdities * to which this construction would tend, and concludes by affirming it to be a princi-

* "Supposing that the necessities of government required a tax of one hundred per cent on all values, or, what would be the result of such a tax, an appropriation of all the property in the State, — it is plain that the State would receive no benefit from evidences of debt due by some of her citizens to others, and payable out of the tangible property which the State had already taken."

"The legislature may declare that a cause of action shall be taxed, but a cause in action cannot pay the tax; and this because it has, and can have, no value independent of the tangible wealth, out of which it may be satisfied."

"It may not be possible in every case to show that the debtor has paid the tax assessed to his creditor. But it admits of mathematical demonstration, — if other property in the State has been assessed at its value, — that the money which shall ultimately satisfy the debt (if it ever is satisfied) has paid the tax. If it were practicable to assess all the property in the State at the same moment of time, it would be clear to every mind that an assessment of a credit was an attempt to transfer to it a value elsewhere assessed. If a debtor was found to be the owner of one thousand dollars, and is assessed for that sum, and his creditor is found to be the owner of his note for one thousand dollars, and is assessed for a like sum; and if the day after the visit of the assessor to the creditor the debtor shall pay his note, it is clear that this same value has been twice taxed; since the debtor has parted with his money, and received only that which is certainly not taxable property in his hands, and which can never afterwards be assessed. When a debtor pays his debt, he does not abstract or destroy any portion of the taxable property of the State; the aggregate of values remains the same." — *Opinion of Justice McKinstry.*

Suppose, "were such a thing possible, that the entire tax-rolls exhibited nothing but indebtedness. Taxation under such circumstances would of course be wholly fanciful, as having no actual basis for its exercise." — *Opinion of Chief Justice Wallace.*

ple in taxation, that "*it is property in possession, or enjoyment, and not merely in right, which must ultimately pay every tax.*"

California, therefore, in this decision leads off in a matter of tax reform, which every other State sooner or later must adopt, if it would give to its citizens the maximum advantage to be derived from the obtaining and employment of credits.

Another point preliminary to reform, in respect to which it is important that there should be a clear understanding on the part of the public is, that there is a broad and philosophical distinction between "taxation" and "arbitrary taking." It is often assumed that a State, because of its sovereignty may, through form of law and delegated authority, deal with the persons and property of its subjects as it may see fit; and repugnant as is this assumption to the principles which are assumed to constitute the foundation of all free government, it is not to be denied that previous to the adoption of the Fourteenth Amendment, it would be difficult to show what restraint existed upon the complete sovereignty of the States of the Federal Union over persons and property within their unquestioned jurisdiction; the right to hold a certain class of their population in slavery, and the right to take private property for public purposes without making any compensation (*Baron v. Mayor of Baltimore*, 7 Peters, p. 243: 1833), being illustrations of the exercise of such arbitrary powers in the utmost extreme. But the most recent expression of opinion of the U. S. Supreme Court on this point, as given in the case of *Loan Association v. Topeka* (20 Wallace, 658), is as follows: "There is no such thing in the theory of our government, State or National, as unlimited power in any of these branches. The executive, the legislative, and the judicial departments, are all of limited and defined powers. There are limitations of power which arise out of the essential nature of all free governments, implied reservations of individual rights, without which the social compact could not exist, and which are respected by all free governments entitled to the name. Among these is the limitation of the right of taxation."

An inquiry now as to the nature and extent of this limitation in the case of free governments (for the court further added in the above case, that "a government which held the

lives, liberty, and *property* of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power is but a despotism”) may be answered (at least in part) by saying, that from the time of Montesquieu down to the time of the Report of the Massachusetts Tax Commissioners in 1875, no writer of repute (jurist or economist) has ever taken any other ground, than that *taxes are the compensation which persons or property pay the State for protection*, or in other words, that taxation is the correlative of protection; and that the act of a State, in levying upon that which its processes cannot reach — persons or property — and which, therefore it cannot protect, is not entitled to the name of “taxation,” but is simply arbitrary taking or spoliation. Taxation, to quote from only one recent law writer, “is in any view taking private property for public use; and it cannot be so taken without an equivalent, both as to the government or the citizens. It is not competent to convert private property to public use, by way of taxation, and without compensation, any more than by any other mode.”—*Redfield*. That the principle as thus stated is the supreme law of the land, so far as the U. S. Supreme Court can make it so, must be further apparent from the following extracts from its decisions, which in substance have been again and again repeated:—

“Governments are organized for the protection of persons and property, and the expenses of the protection may very properly be apportioned among the persons protected, according to the value of their property protected.”—*Chief Justice Waite, Tappan v. Merchants' Bank*, 18 Wallace.

“Where there is no protection, there can be no claim to allegiance or obedience.”—*Justice Story, United States v. Rice*, 4 Wheaton, 246.

“It is an eternal principle of justice, that jurisdiction cannot be justly exercised by a state over property not within the reach of its process; that is, property which it cannot protect.”—*Miles v. Duryee*, 7 Cranch, 481.

And if these citations in the way of authority are not sufficient to establish the principle in question, we have the Fourteenth Amendment of the United States Constitution, which prohibits any State from depriving any person of property “without due process of law”; and taxation without jurisdiction, and therefore without the possibility of the correlative

return of any protection as compensation, is, it would seem, an arbitrary exaction on property, and not "due process of law"; and also not giving that full faith to the public acts and judicial proceedings of other States required by a previous clause of the Constitution. It must, however, be stated, that by many this reasoning is not regarded as conclusive; and more especially is this the case in Massachusetts, which taxes her citizens in respect to visible, tangible property, acknowledged to be within the territory and jurisdiction of other States. In the recent report made by the commission appointed by the legislature of Massachusetts to inquire into the expediency of revising the tax-laws of that State, the commissioners at the outset evidently felt impressed with a feeling that they must vindicate the practice of their State in this particular, and that unless they succeeded in doing so, the whole theory of arbitrary, infinitesimal taxation, of whose continuance they are advocates, might be seriously broken in upon. They accordingly set about it in the following amusing manner. With the Declaration of Independence before them, maintaining it to be in the nature of a self-evident truth, that "all men are endowed by their Creator with certain inalienable rights"; and "that among these are life, liberty, and the pursuit of happiness," the commissioners gravely announce that "*the individual person*" (in Massachusetts) "*has no inalienable rights except that to his own righteousness.*"* They next

* That Massachusetts assessors in practice really act on the theory of Massachusetts State Tax Commissioners, that a man in Massachusetts has no inalienable rights except "to his own righteousness," has found a striking illustration in a communication recently made to the Boston public by one of its leading capitalists. In this the writer makes known the following extraordinary facts. In 1872-3, the writer (Nathan Mathews) purchased a large amount of mortgages of an incorporated company, known as the "Water Power Company," supposed at the time to be a good investment. In 1873 the company failed, and put off their creditors with mortgage bonds in exchange for their notes, but it was necessary, in order to make this arrangement work, for Mr. Mathews, who was a heavy indorser of these notes, to give new notes and the bonds as a collateral for them. No interest is now paid on the mortgage bonds, and the property is taxed *three times*. First, the lands are taxed for more than they will sell for; second, the creditors are taxed on the mortgage of the property; and Mr. Mathews, who only passed over the bonds to these creditors as collateral, is taxed as the owner of them. In view of such a state of things, it may not be impertinent to suggest, that stimulus to any other kind of righteousness than that of self-righteousness is not as great in Massachusetts as would seem to be desirable.

scout the existence of any theory — expressed or implied — of contract between the State and the citizen, “whereby the subject is bound to render some service to the State, as a recompense for the service which the State has rendered to him”; when the Constitution of Massachusetts, which may be supposed to have been also before them, recognizes this contract in the following explicit language: The legislature shall have power “*to impose and levy proportional and reasonable taxes upon all the inhabitants of, and estates lying within the Commonwealth, for the support of the government of said Commonwealth, and the protection and preservation of the subjects thereof.*” The ground having been thus cleared of obstructions, the commissioners next advance to what in their opinion is the true theory of taxation, namely, that “*a man is taxed not to pay the State for its expense in protecting him, and not in any respect as a recompense to the State for any service in his behalf, but because his original relations to society require it.*” It is somewhat difficult to consider such reasoning from any other standpoint than the ridiculous; but as the original relations of man to society are unquestionably the relations which come into existence when society is incipient or in process of formation, — when the law of might is the law of right, and everybody gets what he can and keeps what he gets, — it may be remarked that the Massachusetts commissioners have at least been logical and consistent in making the reference they have made for the origin of such an arbitrary system as they advocate. Laying aside, however, all subtleties of reasoning, all appeals to court decisions, and all reference to the “original relations” of society, the plain, simple questions which it is desirable under this head to bring before the public are: “Is it consistent with the principles of equity? Is it conducive to public morality? Is it worthy of a high civilization for a State or a community to tax directly or indirectly property not within their territory or jurisdiction, and which their laws are unable to reach or protect?” And when the public have been induced to give them intelligent consideration, there can be no question that a further long stride in tax reform will be made most speedily.

Finally, as a further precedent to radical reforms in local

taxation through popular action, there must be a larger popular comprehension of the principle, that in order to burden equitably and uniformly all persons and property, it is not necessary to tax primarily all persons and property within the taxing district. The experience of Philadelphia, Montreal, England, and France, where personal property is excluded from taxation, and the burden of the expenses of the State is made to fall primarily and almost exclusively upon realty, is an absolute demonstration, "that any complicated and inquisitorial system of separate taxation of goods and chattels is wholly unnecessary, an obstruction to trade, an injury to production, an unnecessary invasion of the privacy of human affairs, and a self-torment inflicted on land itself." The Massachusetts Commissioners, however, in their recent report, before referred to, contend that the doctrine that taxes tend "to equate and diffuse themselves," "is condemned by facts and justified by no sound economical theory"; and that on the contrary "the tendency of taxes is, that they must be paid by the actual persons upon whom they are levied," at the same time quoting from British writers to prove that the incidence of British taxation falls with crushing severity upon the poor, and prophesying that the same result will follow the adoption in this country of the simple system recommended by the New York Commissioners. But the reasoning of the Massachusetts Commissioners confutes itself. For if taxes do not diffuse themselves, and "stay where they are laid," how can the poor be crushed, and made to bear "disproportionate burdens" under a system like that of Great Britain, which taxes directly no actual necessary of life, nor indeed any article of consumption with the exception of tea, coffee, spirits, beer, and tobacco, which exempts all incomes under £100 (\$500); and finally all houses renting for less than £20 (\$100) per annum, an estimated exemption (from imperial taxation) of six-sevenths of all the dwellings in the kingdom? * What, furthermore, do such reasonings and assumptions as those of the Massachusetts Commissioners on the subject of the diffusion of taxes amount to, in view of the most significant fact, that in

* For local taxation, houses are made subject to assessment in Great Britain; the poor-rate being imposed on houses of £6 rental and upwards.

Philadelphia, containing over fifty thousand small houses built under the auspices of loan and building fund associations, and mainly owned by their occupants; where the infinitesimal system of taxation is not recognized, where real-estate is almost the only thing subject to primary assessment, and where the current rate of taxation for the present year (1876) is in excess of two per cent (2.15) on a basis approximating market value, there is little or no complaint against the method of taxation, but only against the amount; while the contentment and general prosperity of the poorer and middle classes are admitted to be greater than in any other city of the country?*

Another illustration to the same effect and equally striking is found in the fact, that during the past year, the city of Montreal revised its system of taxation, and as preliminary to doing so, submitted to popular judgment through an official circular, prepared in the Auditor's Office, five different statements, showing in what manner the annually required municipal revenue might be raised by various forms of taxation; but in all of these the only items of personal property, which it was even suggested should be made subject to direct assessment, were the items of pleasure horses and carriages.†

The features of the proposed revision were in the direction of further simplification,—making the system to consist mainly of a taxation of one and a quarter per cent on all real property; an annual tax (to be called a business tax) on all trades, manufactories, occupations, professions, etc., not exceeding seven and a half per cent on the annual value

* In 1874 the real estate of Philadelphia was assessed at \$539,003,602, claimed to be full valuation. The personal property of the city subject to taxation for city purposes in 1875 was returned at a valuation of \$9,464,873; and includes horses, carriages, furniture, and gold and silver watches.

† The system of taxation in force in Montreal previous to the revision of 1875 was as follows:—

Assessment of $\frac{1}{8}$ per cent on value of real estate.

"	$\frac{1}{8}$	"	"	for school tax.
"	$\frac{1}{16}$	"	"	" railway tax.
"	$7\frac{1}{2}$	"	"	on rental.

Business duty $7\frac{1}{2}$ per cent on business premises.

Water-rates.

Special taxes on insurance, telegraph, ferry, and street railway companies, and on inn-keepers, billiard-tables, theatres, breweries, banks, brokers, etc.

Licenses on grocers, butchers, exhibitions, dogs, etc.

(rental) of the premises occupied ; and an annual tax on pedlers, inn-keepers, theatres, ferries, street railways, and the owners of horses, vehicles, dogs, etc. ; insurance and gas companies and banks ; the proposed annual tax on the latter to be not in excess of four hundred dollars on every bank with a paid-up capital of one million or less, and increasing gradually for banks with capital in excess of one million.

In considering this question of the diffusion of taxation it is essential to correct reasoning that the distinction between *taxation* and *spoliation* be kept clearly in view. That only is entitled to be called a tax-law which levies uniformly upon all the subjects of taxation ; which does not of itself exempt any part of the property of *the same class* which is selected to bear the primary burden of taxation, or by its imperfections to any extent permit such exemptions. Such taxes if not so excessive as to become a prohibition on the use of the thing taxed, become a part of the cost of all production, distribution, and consumption, and diffuse and equate themselves by natural laws in the same manner and in the same minute degree as rents, wages, cost of material, waste, and all other elements that constitute the expenses of production. " We produce to consume, and consume to produce, and the cost of consumption, including taxes, enters into the cost of production, and the cost of production, including taxes, enters into the cost of consumption, and thus taxes uniformly levied on all things of the same class, by the laws of competition, supply, and demand, and the all-pervading mediums of labor, will be distributed, percussed, and repercussed to a remote degree, until they finally fall upon every person, not in proportion to his consumption of a given article, but in proportion to his aggregate consumption. Mr. Astor bears no greater burden of taxation (and cannot be made to bear more by any laws which can properly be termed tax-laws) than the proportion which his aggregate individual consumption bears to the aggregate consumption of all others in his circuit of immediate competition. As to Mr. Astor's other taxes he is a mere tax-collector, or conduit, conducting taxes from his tenants or borrowers to the State or city treasury. A whiskey distiller is a tax-conduit or tax-collector, and sells more taxes than the original cost of whiskey ;

a dealer in imported goods, like Mr. Stewart, keeps a stock of accumulated imports, foreign and domestic, for sale; the farmer charges taxes in the price of his product; the landlord in his rents; the laborer in his wages; the clergyman in his salary; the lender in the rate of interest he receives; the lawyer in his fees; the manufacturer in his goods.”*

The general principle governing the diffusion of taxes is also thus happily set forth by a recent anonymous writer in the New York Tribune, and is here quoted for the reason that it is of the utmost importance to the future enactment of proper tax laws, that the popular fallacy adhered to and renounced by the Massachusetts commissioners, that “*the tendency of taxes is that they must be paid by the actual persons on whom they are levied,*” should be thoroughly exploded, as it can be, by illustrations and arguments which are the farthest removed from abstract reasoning:—

“Taxation is a question of interest to all, for in a civilized community every man, woman, and child is taxed. The owner of real estate pays his tax and increases his rent to a proportionate extent. The tenant must counterbalance this increase in some way, and so he increases his profits on goods sold. If the buyer of the merchandise sells it, he also obtains an advance on the cost price sufficient to cover his charges and rent; but if he retains and consumes it, he is the man who really pays the tax to the State. But he does so at the expense of the whole community, for, supposing him to be a mechanic, then in order to pay the increased price he must get increased wages, or if he be a merchant he must charge additional profits, or if a landlord he must advance his rents. The man who evades a tax robs his neighbors. The thief pays taxes indirectly, for he is a consumer and must pay the advanced price caused by his own roguery for all he consumes, although he does steal the money to pay with. Idlers, and even tramps, pay taxes, but the amount that they indirectly pay into the fund is much less than that which they take out of it. To avoid taxation a man must go into an unsettled wilderness, where he has no neighbors, for, as soon as he has a companion, if that companion be only a dog, taxation begins, and the more companions he has, the greater improvements he makes, and the higher the civilization he enjoys, the heavier will be the taxes he must pay.”

* Exclusive Taxation of Real Estate. Remarks of Isaac Sherman before the Committee of Ways and Means, New York Assembly, 1875.

On the other hand any law or system, which by its provisions exempts, or by its imperfections allows to go unburdened, any part of the property of the same class, which is made the subject of taxation, is spoliation on that part which is discriminatingly burdened; and it is not contended for one moment that such discriminating burdens uniformly diffuse and equate themselves, any more than the loss by robbery of one man in a crowd, or by the destruction by fire of one house in a town, is equally diffused over the whole crowd or community, any further than a diminution or waste of the aggregate abundance of any community makes that community as a whole poorer. Thus, if of two persons, one is taxed and the other escapes or evades taxation on one and the same class of property, it will be obviously impossible for the former to add his taxes to whatever of such property, or the results of its employment, he may desire to sell, if he is to meet the latter in direct competition in open market, where all persons seek the lowest prices, offering to sell the same things which have not been burdened by taxation. In such cases "the surcharged tax-payer, according to the amount of the favored competition, becomes the victim, not of taxation, but of an arbitrary exaction, and cannot diffuse it, but must pay it, or retire from the unequal competition." And it is just here that the immorality of the infinitesimal system of local taxation — of which the Massachusetts system is a type — especially manifests itself. It starts out with a theory (of the necessity of taxing everybody and everything) which at the best can only be carried out most imperfectly; and so creates inequality, or a sense of wrong between man and man, at the very first stage; next (and can there be a greater absurdity?) it calls upon the individual to enumerate and value his own property, for the purpose of taxing him; or as it has been pithily expressed, "It calls for a lie, and gets it." Here is a premium offered, and generally accepted, for further inequality. And finally, it obliges men who naturally incline and desire to be honest, to become dishonest, in order to protect themselves against unfair competition, and avoid being crushed. The result of all this does not especially show itself in any popular outcry against inequality, for fraud balances fraud to such

an extent that the advantage of fraud is in a great degree neutralized ; but it does manifest itself in something which everybody is coming to recognize, and against which religious and moral teachings seem to avail little ; namely, a general impairment of the standard of private and of public morality. "Give me good finances," says a recent continental writer on the finances of Austria, "and I will give you good politics."* He might have added with equal truth and propriety, Show me an individual or a State, whose finances are bad, either as respects administration or resources, and I will show you one whose morality rests upon a very insecure foundation. We ought, therefore, to find at no distant day, the special guardians and teachers of morality who earnestly desire to be true to their trust, enlisted also as the special advocates of local tax reform ; and a little investigation and study of the philosophy of the diffusion of taxes will furnish them in common with the public, with the basis for constructing a system of taxation which will fortify the State alike in respect to its morality and its revenues.

Any account of the present state of public opinion and of progress in respect to local tax reform would, however, be imperfect, which omitted to call attention to a pamphlet on this subject recently published at Memphis, Tennessee, which is remarkable alike for its strength of argument and originality of illustration ; for its sharp and clear antagonism to the theory and reasonings of the Massachusetts commissioners ; and, finally, for the quarter from which it emanates. Its author, Enoch Ensley, is a citizen of Tennessee ; an ex-confederate ; an extensive and (since the war) successful planter, — one of the first to organize and profitably use free labor at the South, — and who, earnestly desiring the rapid material development of his section of the country, has felt especially solicitous that this development should not be retarded by the adoption and enforcement at the South of an unsound system of State and municipal taxation. In furtherance of this desire he has accordingly published, in the form of a letter addressed to the Governor of Tennessee, a little pamphlet of twenty-seven pages, in which he asks the people of

* Comte de Mülinen.

that State to consider with him, from the standpoint of their common material interest, "What should be Taxed, and how it should be Taxed?"* If the people of Tennessee would read and consider it, this pamphlet would give them much information, difficult to obtain elsewhere, in a small compass, and possibly prove to their State the inception of a period of great prosperity.

Mr. Ensley commences by proposing this rule, or motto, as the basis for a Tennessee system of taxation: "*Never tax any thing that would be of value to your State, that could and would run away, or that could and would come to you.*" Mr. Ensley then lays down the proposition, that property naturally divides itself in two classes, — movable and immovable, — and that the former has no value until movable property is directly created or employed upon it, or until the former has a value reflected upon it from the employment of movable property in proximity; citing in proof and illustration the fact that the best acre of land in America has no value until some one goes on to it with movable capital, instruments, animals, &c., to cultivate or use it, and that from that time its value increases steadily in proportion to the increase of the value of the movables directly or indirectly employed or connected with it, until it may finally attain the value of the lots covered by the leading stores and banking institutions of our large cities.

In all this, however, there is nothing of novelty; but in the homely, clear illustrations which Mr. Ensley employs for impressing his fellow-citizens with the truth of his fundamental propositions, novelty is not wanting. Thus, for example: —

"I hold that, of all men, the real estate or fixed property man is most interested in the rule or motto I have adopted. To illustrate, I will say, there is an acre of ground in Memphis — say in front of the Overton Block — that is worth \$200,000; while the writer has an acre six miles below the city, quite as good naturally, and even better (because it will produce more corn, cotton, pumpkins, peas, potatoes, cabbages, etc., than the Overton lot will, or ever would), and my acre is not worth one hundred dollars per acre. Now,

* "The Tax Question. Important Letter to Governor Brown. What should be Taxed, and how it should be Taxed? Suggestions for the People of Tennessee to consider." By Enoch Ensley, of Memphis. Nashville, Tenn., 1873.

why is it that the Overton acre is worth \$ 200,000 per acre, and mine not worth \$ 100. The reason is, that there is employed on the Overton acre profitably several hundred thousand dollars of movable property, whilst upon mine there is employed the sixteenth part of a negro, the sixteenth part of a mule, plough, hoe, etc. Now, if you will manage in any way, either by taxation or otherwise, to drive from this Overton acre the two, three, or four hundred thousand dollars, and render it so that this capital cannot be employed upon it with a profit, it will not be worth more than my acre, — in fact, not so much, for there is nothing so valueless as ground covered with houses, when there is no demand for said houses. And further, if you do anything to make the two, three, or five hundred thousand dollars pay less profit, you will damage the ground, or lessen its value, more rapidly than you will decrease the profits, — not in the same ratio, but more rapidly. Suppose, for instance, the profit has been ten per cent net on the capital employed, and the property is paying a rental on \$ 300,000 ; if you reduce the profits permanently, in any way to *five* per cent net, the property would not pay a rental on \$ 150,000 ; in fact, it would hardly pay any rent at all, for five per cent would be too small to induce a business at all in this country."

"Movable property always seeks and locates on immovable property, where it thrives and multiplies most rapidly. A spot of ground, a city, a state, or a nation that offers the greatest thrift will be sought and located upon by the greatest quantity of it, and the greater the quantity the more value and thrift will the land have. Any tax levied upon it lessens its thrift, and consequently is in violation of the correct principle."

"Here I wish to state a truism which, perhaps, many owners of real estate in Tennessee may never have thought of, to wit : The renter or lessee of real estate must always prosper before the owner of the real estate can expect to prosper. This is certainly true as a rule, when taken for a series of years, in a country like ours, where the land is abundant and the people free to go where they please. I don't mean he must have greater prosperity, but that he must prosper first."

"In the city of Nashville (1873) the rate of taxation for all purposes is about three per cent, and in Memphis it is about four and a half per cent. All property in these cities is sought to be taxed at these respective rates, and trade and merchandise is sought to be taxed even higher by nearly one half of one per cent, which would make the tax on merchandise about three and one half per cent in Nashville, and about five per cent in Memphis. The tax in Nashville is

three per cent on money, and by the laws of the State, not exceeding ten per cent interest can be charged ; three per cent from ten leaves seven. United States bonds pay six per cent annually in gold, which is fully equal to seven per cent currency, and taken into consideration that they can be realized on at any time, they are far more desirable than money loaned at seven per cent currency. The result is that there are millions of dollars in the city of Nashville invested in bonds which pay no tax whatever, which (money), if there was no tax sought to be put upon it would be turned loose, and enter the industry, trade, and development of the resources of the State."

"A further result of the tax at three per cent is, that it offers inducement to banks to carry on business with a small capital, and rely upon deposits for capital ; in other words, to undertake to do banking business without capital. The result is, that in Nashville now there is only about one million dollars banking capital, when before the war there was nearly or quite five millions. If you will give her five millions of banking capital now (and she would surely get it but for the tax on money), and not impose the high and oppressive taxes on her trade, it is an absolute certainty that her population, trade, manufactures, and general industry would increase one hundred per cent in the next ten years, and perhaps in the next five or seven years. If you double her population, trade, etc., which must be accompanied by general thrift and go-ahead, you will quadruple the value of real estate or immovable property, thereby add largely to the wealth of the State, and enable the State, less oppressively to the citizens throughout the State, to pay her interest and debt."

"If you will levy and collect the tax that is sought to be collected in Memphis to-day, on the money, trade, etc. of New York, and charge no tax in Boston, Philadelphia, or Baltimore, I will guarantee to transfer, in a short time, hundreds of millions of the trade, money, etc. of New York to those cities, and if (New York) will continue it five or ten years, I will guarantee to show you, in either of these cities, more trade, more money, and more people than in New York. I will guarantee to depopulate her more effectually and more permanently than a plague ever did a city, and impoverish her more effectually than war ever did. Yes, I will hurt her infinitely worse than a fire, and I will make it entirely safe for women and children to cross Broadway at City Park without the protection of policemen. And who would be the injured party in New York by the enforcement of such a law ? Would it be the merchants who, for aught I know, rent their houses from the great real estate owners ? or would it be the great real-estate owners ? In other words, would it be the movable

property-man, — with his goods, money, etc. — who can take it and go elsewhere, or would it be the immovable property or real-estate man who has to stay where he is, and pay his city and county debt, without tenants or rentals from his property? Hence I say, that of all the men who should object to oppressive, and to follow the principle, I will add, any taxation at all on money, merchandise, or trade, manufactories, etc., it is the man who owns the real estate or immovable property. His position should be this: He should say to the thousands of men with money in their pockets, looking out a favorable locality to go to banking, merchandising, manufacturing, or farming, Come, locate on me; I will not oppress you. Come to me, for I can't go to you, and we must come together, or I am worth nothing; and, knowing this, I will not tax and oppress you. Other localities make you pay a tax; I will not, and consequently I offer that advantage over other localities. Heretofore, it has been the merchant who has done the complaining about the tax levied on him. He is not the one to do it. It is the real estate man, and the writer being one of these men, owning real estate almost entirely, and not owning a dollar's worth of merchandise of any kind for sale, and not being a lender of money, but on the contrary a borrower, and not being the owner of machinery, except a steam saw-mill and a steam cotton-gin, but being a plain farmer or planter by profession, thinking he sees his interest in the system he is advocating, consequently therein is to be found the moving cause of this letter."

"I contend that this system will lighten the burdens of taxation on real estate, and after a short time the rate of taxation will be really less. A short time ago, a prominent real-estate owner of Memphis said to me: Do you say, that a merchant or banker shall make from ten to sixteen per cent on their capital, and pay no tax, and I make only six or eight per cent on the houses they are occupying, and pay all the tax? Yes, said I; you seek to tax them, and that is the reason you get no larger per cent on your property. Says I, if they make one hundred per cent per annum on their capital, you should not want them to pay a copper of tax. Why? because if they made it, you would have forty applicants for the house they are doing business in, and if you should, you would certainly get a full rent for it, more than the extra tax, as only one of the forty could get it, and the other thirty-nine would be unaccommodated; and if your tenants should be making this large per cent, it is reasonable to presume that they would be making something near it all over town. But as only the present tenants, or their number, could be accommodated with houses, the result would be that you would not only

get exorbitant rents for all the houses in town, but you would have demand for the hundreds of thousands of vacant lots throughout the city to build store-houses on; they would buy them, or offer you such enormous rents as would induce you to build them houses on lots that you have been paying taxes on for years, and received no rental from. Soon there would be houses going up all over the city, block after block. The brick-maker, the lumberman, the carpenter, bricklayer, and all descriptions of mechanics and laborers would have more than they could do, so that the builders would have to send elsewhere for mechanics. All these new-comers in turn would want residences, and thus you would bring into demand and make pay rental thousands of lots that have never paid anything, give active employment to all the mechanics you have, and besides bring thousands from other places."

"Let us go a little further, and see how it (this policy) affects all and everybody in the city. These new-comers get their houses, and then they want furniture, and they patronize the furniture-man; they want a carriage or wagon for family use, and they patronize your carriage-man; and then horses, and patronize the horse-man; and then the blacksmith, to shoe them; and then the retail dry-goods houses, mantua-makers, milliners, grocery-men, butchers, and in short every kind of retail establishment throughout the city, thereby giving vigor, life, and thrift to all; and thus it would go on, until before you are aware of it, you would have a city of thousands of people, and be worth and pay a rental on hundreds of millions of dollars. Then where would be your city and county debt, and a necessity for a high rate of taxation? and where would be the oppression, when you have got four times as much to pay with? In a few years, when the legislature came to fix the rate of taxation for the State, it would discover that a spot of ground down here in West Tennessee, called Memphis, which heretofore has been worth and paid a tax on only \$ 25,000,000, is now worth, and can pay a tax on \$ 100,000,000, just as easily as it did some years ago pay on \$ 25,000,000. Consequently, the tax to pay current expenses, interest on the State debt, etc., need not throughout the State be put so high."

"Of course, no general trade would pay one hundred per cent per annum, but I have adopted it (this rate) to illustrate the principle, which is the same."

All this, as before intimated, is sound, clear, homely talk; but it is safe to predicate that it will make no material impression on the public opinion of the section to which it is specially

addressed, or much anywhere. Nations and communities, as well as individuals, learn economic wisdom almost exclusively in the hard and costly school of experience.

To round out and complete Mr. Ensley's picture of American taxation as it might be, and its results, he should have further added and illustrated, that by the adoption of a system of taxation based mainly on realty and rentals, the latter to be assessed directly against the occupier, a much larger number of citizens than now can probably be induced to take an active interest in municipal politics, and watch all proceedings involving municipal expenditures; for under such a system nearly every citizen would pay a direct tax, proportioned to the scale of his residence. Under the existing popular systems of taxation on the contrary, the taxes on realty are assessed against and collected of the real estate owners, who in turn collect it of their tenants, not in the form of taxes, but of rents. The tenant, however, rarely if ever discriminates in such matters, and so becomes generally indifferent to municipal politics, and not unfrequently through a feeling that increased taxation cannot affect his interests, advocates the largest expenditures. In the English cities, and in London more especially, where taxation falls mainly on rentals and occupiers, this watchfulness of the individual citizen and rate-payer over the proceedings of their municipal authorities in all matters of expenditure has been particularly observed and its beneficial influence recorded.

Finally, while we are discussing what we shall tax, and how we shall tax, and speculating on what future courts and legislatures are likely to do in settling these questions, it should not be overlooked that there is another element all the time working for reform, which puts courts and legislatures in a great degree at defiance; and that is, the quiet, unorganized, never-ceasing, but in the end all-powerful and all-subduing spirit of popular resistance which, especially in all free and highly intelligent communities, always puts itself in opposition to the effectual carrying out of bad laws. The smuggler has been called "the knight-errant of civilization," because in disregard of law, and sustained in a high degree by popular opinion, he compels the letting down of barriers by which a false political economy seeks to isolate nation from nation, and re-

strict commerce. When every member of the House of Commons had a silk handkerchief of French manufacture in his pocket, the importation of which was forbidden under heavy penalties, the law establishing such a prohibition, although unrepealed on the statute-book, was dead, and only waited for burial. And so in respect to that feature of the generally accepted American tax system which relates to personal property. The law says, that all such property shall be taxed at its full and true value. Individual, if not public, sentiment says it shall not. How stands the conflict? In New York city, out of a population of over one million, only 8,920 names, or less than one per cent of the population had, in 1875, any "household furniture, money, goods, chattels, debts due from solvent debtors, whether on account of contract, note, bond, or mortgage, public stocks, and stocks in moneyed corporations," or in general any personal property of which the assessors could take cognizance for taxation; although at the same time the assessors estimate that of the property defined and described by law to be personal property, there is in New York city an amount approximating \$2,000,000,000 in value.* In the State of New York, the State assessors for 1873 report that, of the personal property of the State, "less than 15 per cent liable to taxation finds a place on the rolls of the assessors,"† while in Ohio, under laws similar to those existing in New York, not one person in ten has any visible property which can be made subject to assessment. In New York and Ohio, the basis of taxation has therefore practically got down to a real estate basis, because the people, acting individually, will not have any other; and yet, acting collectively, through their representatives in "legislature assembled," these same people decide that the law, under which these proceedings can be possible, shall not be taken from the statute-book, and decently buried. They prefer to build churches, establish schools, and at the same time keep up a system which neutralizes in great part the very work for which the churches and schools are established. And even in Massachusetts, which claims a better record, it would probably be found, if the facts could be ascertained, that under the

* Report of the Tax Commissioners of New York City, 1875.

† Report of the State Assessors of New York for the year 1873.

most stringent system which popular opinion can be made to tolerate, not fifty per cent of the personal property subject under law to assessment ever comes within the cognizance of the assessors.

DAVID A. WELLS.

ART. VI.—CRITICAL NOTICES.

1. — *Sound*. By JOHN TYNDALL, D. C. L., LL. D., F. R. S., Professor of Natural Philosophy in the Royal Institution of Great Britain. Third Edition. London: Longmans, Green, & Co. 1875.

THE chief differences between this new edition of a popular and excellent text-book and the former issues consist in the insertion, before the last two chapters, of a new chapter (numbered VII.), of sixty-seven pages, entitled "Researches on the Acoustic Transparency of the Atmosphere in Relation to the Question of Fog-Signalling"; and in a Preface of nineteen pages, mainly occupied in combating the views promulgated by Professor Henry in the Appendix to the last U. S. Lighthouse Board Report, for 1874.

It is well known, from various publications, that Professor Tyndall was engaged under the auspices of the Trinity House, during a great portion of the year 1873 (beginning in May), in investigating the subject of fog-signals, — a subject which had been under investigation by the U. S. Lighthouse Board from a much earlier date and for a much longer period; and Major Elliot, in his recent valuable Report of observations on European Lighthouse Systems, was struck with the fact that "our shore fog-signals are vastly superior, both in number and power," to those of England or of Europe.

Notwithstanding that the results of acoustic observations made from time to time by Professor Henry and his coadjutors during the past ten years, and communicated to the Lighthouse Board, must have been known to its Engineer Secretary, — Major Elliot, — he has occupied one eighth of the Report alluded to, with the detail of Professor Tyndall's observations, mainly embracing the same results; being struck probably with the differences of explanation offered on some of the observed phenomena. The natural tendency, however, of such extended references to foreign investigations, in a narrative addressed to the U. S. Lighthouse Board by its own agent, is obviously as its chairman has stated in the official Report of 1874,

"to convey the idea that the facts which it states were new to the Board, and that the latter had obtained no results of a similar kind; while a reference to the Appendix to this Report will show that the researches of our Lighthouse Board have been much more extensive on this subject than those of the Trinity House, and that the latter has established no facts of practical importance which had not previously been observed and used by the former."

This passage is quoted by Professor Tyndall, and he remarks upon it (Preface, p. 11, foot-note): "It will be borne in mind that the Washington Appendix was published nearly a year after my Report to the Trinity House." While this may be accepted as an evidence of the originality of said Report, it does not establish priority of its subject, since corresponding Reports were made to the U. S. Lighthouse Board in 1855, by Professor J. H. Alexander; in 1865, 1867, and in recent years, by Professor Henry; and in 1871, by General Duane. Professor Tyndall, however, does not appear to be quite satisfied with the broad statement of Professor Henry. He says: "My desire is to be strictly just; and this desire compels me to express the opinion that their Report fails to establish the inordinate claim made in its first paragraph. It contains observations, but contradictory observations; while as regards the establishment of any principle which should reconcile the conflicting results, it leaves our condition unimproved." (*Preface*, p. 15.)

That the observations were "contradictory" is one of their merits, as the essential prerequisite to "the establishment of any principle" that should have a permanent value; and this merit is shared by the observations of Professor Tyndall, who records that "the most conflicting results were at first obtained" (p. 321). The failure to apprehend the complexity of the conditions controlling the propagation of sound, leading to hasty but natural generalizations from a single well-marked occurrence, or from a small number, has tended to impair the confidence of subsequent investigators in the accuracy of previous "contradictory observations."

There is no doubt that were the striking experiment made by Delaroche in 1816, to be repeated under the same essential circumstances, it would be found that a particular sound is carried farther at right angles to the direction of the wind than in its direction. But this is certainly not the general fact, though sometimes so stated.* And the "contradictory observations" as to the effect of

* "The strangeness of Delaroche's results consisted in his establishing by quantitative measurements, not only that sound has a greater range in the direction

wind upon sound generally have led some persons to deny its influence altogether. Thus General Duane in his instructive Report to the U. S. Lighthouse Board, January 12, 1872, detailing the results of experiments made at Portland in 1871, concludes that "the force and direction of the wind have much less influence than has generally been supposed," since he had previously noticed that while the signal sound is often heard at a much greater distance in one direction than in another, "this is not the effect of wind, as the signal is frequently heard much farther against the wind than with it."

On this subject there is in the researches of Professor Tyndall a singular lack of any original observation or suggestion; and as to the true character of the perturbations of sound by aerial currents, he "leaves our condition unimproved." In Chapter VII. Section 3, "Contradictory Results," he says: "None of the meteorological agents observed could be singled out as the cause of these fluctuations. The wind exerts an acknowledged power over sound, but it could not account for these phenomena. On the 25th of June, for example, when the range was only six and a half miles, the wind was favorable; on the 26th, when the range exceeded nine and one fourth miles, it was opposed to the sound" (p. 268). Not a thought occurs here that aerial currents are seldom uniform for any great extent; not a suspicion that, above the observer's head, the wind might differ either in direction or in force, or, if it did, that either of these circumstances could in any way affect the radiations of sound; no idea of differences of temperature in atmospheric strata exercising any action of acoustic refraction; but only the most cursory notice is taken that "the wind was favorable," or "was opposed to the sound."

The most significant remark in his work, on the "Action of Wind" is the following from Chapter VII. Section 7: "On the leeward side of the Foreland, on the 23d of October, the sounds were heard at least four times as far as on the windward side. . . . This well-known effect of the wind is exceedingly difficult to explain. Indeed, the only explanation worthy of the name is one offered by Professor Stokes. . . . In a short, but exceedingly able communication presented to the British Association in 1857, the eminent physicist above mentioned points out a cause which, *if sufficient*, would account for the results referred to." (pp. 309, 310, 311.)

of the wind than in the opposite direction, but that the range at right angles to the wind is the maximum." (*Sound*, pp. 310, 311.) Professor Tyndall adds in a footnote (p. 311): "Experiments so important as those of Delaroché ought not to be left without verification. I have made arrangements with a view to this object"

To Professor Henry belongs the credit of having first established the principles reconciling the "contradictory observations" made by himself and by others, and demonstrating by a carefully discriminated series of facts the "sufficiency" of the theory proposed by Professor Stokes.

During Professor Tyndall's visit to this country, he was present December 11, 1872, at the reading of a paper by Professor Henry, "On certain abnormal Phenomena of Sound in Connection with Fog-Signals," before the Philosophical Society of Washington. (Bulletin, Phil. Soc. W., Vol. I. p. 65.) Almost immediately on his return to England, in 1873, he began a series of investigations on the same subject. "On the 19th of May, 1873, this inquiry began. The South Foreland, near Dover, was chosen as the signal station." (*Sound*, p. 260.) Yet throughout the numerous channels of publication in which his results were spread, one looks in vain for an allusion to any similar work having been done in this country.

In the new Preface (dated June, 1875), after noticing somewhat superfluously, though with an air of impartial commendation, the experiments of Professor Henry, published in the Lighthouse Board Report, on the character of the instruments employed as fog-signals (*Preface*, pp. 12, 13), he adds vaguely: "I was quite aware, in a general way, that labors like those now for the first time made public had been conducted in the United States, and this knowledge was not without influence upon my conduct." (p. 14.) What acknowledged influence these earlier labors of Professor Henry in the same field had does not appear from anything to be found in Professor Tyndall's writings. That the Preface in its present form is due to the dissent from his favorite theory of invisible acoustic clouds in the atmosphere, expressed by Professor Henry in the Appendix to the Lighthouse Report of 1874, is sufficiently obvious. Indeed, its polemical tenor very clearly indicates that the question involved therein is simply one of explanation, — the acceptance or non-acceptance of certain views, — in no respect one of priority of observation of the fundamental facts. And, in fact, no anomaly of sound has been referred to, not embraced and discussed in the previous investigations of the U. S. Lighthouse Board, and no practical recommendations given for improving the fog-signal service with a view to the protection of life and of property at sea, not already adopted in this country.

After briefly reciting some of the instrumental experiments undertaken by the chairman of the U. S. Lighthouse Board, Professor Tyndall continues: "Further observations were made by Professor Henry and his colleagues in August, 1873, and in August and Sep-

tember, 1874. In the brief but interesting account of these experiments, a hypothetical element appears which is absent from the record of the earlier observations." (*Preface*, p. 13.) This tribute at least illustrates the caution of the true philosopher in framing hypotheses.

The key-note of Professor Tyndall's contribution to the theory of sound is atmospheric "floculence," or non-homogeneity. On the remarkable variability in the range or penetration of sound observed on different days, he gives the following summary of his conclusions: "These discrepancies were proved to be due to a state of the air which bears the same relation to sound that cloudiness does to light. By streams of air differently heated, or saturated in different degrees with aqueous vapors, the atmosphere is rendered *flocculent* to sound. *Acoustic clouds* in fact are incessantly floating or flying through the air. They have nothing whatever to do with ordinary clouds, fogs, or haze. The most transparent atmosphere may be filled with them; converting days of extraordinary optical transparency into days of equally extraordinary acoustic opacity. . . . Aerial echoes of extraordinary intensity and of long duration are thus produced. They occur, contrary to the opinion hitherto entertained, in the clearest air. . . . The existence of these aerial echoes has been proved by observation and experiment. They may arise either from air-currents differently heated, or from air-currents differently saturated with vapor." (pp. 321, 322.)

This is simply an extension of the received doctrine of a non-homogeneous atmosphere being unfavorable to the transmission of sound; familiar for the last three quarters of a century, or since the observations of Humboldt on his tour in South America. Two years before Professor Tyndall's investigations, General Duane, in a Report to the U. S. Lighthouse Board, of observations made in 1871, had arrived at similar conclusions. This, however, was first published in the Report of the Lighthouse Board for 1874. The following are his remarks on the subject: "Now it frequently occurs that a signal, which under ordinary circumstances would be audible at the distance of fifteen miles, cannot be heard from a vessel at the distance of a single mile. This is probably due to the reflection mentioned by Humboldt. The temperature of the air over the land where the fog-signal is located being very different from that over the sea, the sound, in passing from the former to the latter, undergoes reflection at their surface of contact. The correctness of this view is rendered more probable by the fact that when the sound is thus impeded in the direction of the sea, it has been observed to be much stronger inland. . . .

Experiments and observation lead to the conclusion that these anomalies in the penetration and direction of sound from fog-signals are to be attributed mainly to the want of uniformity in the surrounding atmosphere, and that snow, rain, fog, and the force and direction of the wind have much less influence than has generally been supposed." (*Lighthouse Report*, p. 104.)

Professor Tyndall follows his quotation of these passages with this comment: "The Report of General Duane is marked throughout by fidelity to facts, rare sagacity, and soberness of speculation. The last three of the paragraphs just quoted exhibit, in my opinion, the only approach to a true explanation of the phenomena which the Washington Report reveals." (*Preface*, p. 18.)

Now the rationale offered by Professor Henry, — the flexure of sound-rays by the unequal velocity of their wave-fronts, certainly embraces a larger variety of obscure and puzzling phenomena than that proposed by Professor Tyndall. The observed facts of sound being sometimes heard far beyond an intermediate region of inaudibility, — of its being heard through a given region of atmosphere in one direction, while wholly unheard in the reverse direction, — of its being heard at the mast-head of a vessel, after being lost on deck, — and even of its being occasionally heard with increased distinctness against the sensible wind, — are quite inexplicable on the "acoustic-cloud" hypothesis, while they receive a satisfactory explanation on the hypothesis of acoustic refraction.

Professor Henry, in publishing the Report of General Duane, thus comments on the passages above quoted: "In the foregoing, I differ entirely in opinion from General Duane, as to the cause of extinction of powerful sounds being due to the unequal density of the atmosphere. The velocity of sound is not at all affected by barometric pressure; but if the difference in pressure is caused by a difference in heat, or by the expansive power of vapor mingled with the air, a slight degree of obstruction of sounds may be observed. But this effect, we think, is entirely too minute to produce the results noted by General Duane and Dr. Tyndall, while we shall find in the action of the currents of wind above and below a true and sufficient cause." (*Lighthouse Report*, p. 104.)

Professor Tyndall quotes this paragraph (*Preface*, p. 18), and espouses very positively the opposite view of General Duane: "The observations at the South Foreland, where the sound has been proved to reach a distance of more than twelve miles against the wind, backed by decisive experiments, reduce to certainty the surmises of General Duane." (*Preface*, p. 19.) His presentation, however, of the

view of his competitor, hardly exhibits his usual accuracy or courtesy. He says: "Professor Henry thus accounts for the fact that the north-east snow-wind renders the sound of Cape Elizabeth audible at Portland. In the higher regions of the atmosphere he places an ideal wind, blowing in a direction opposed to the real one, which *always* accompanies the latter, and which more than neutralizes its action. In speculating thus he bases himself on the reasoning of Professor Stokes, according to which a sound-wave moving against the wind is tilted upwards. The upper and opposing wind is invented for the purpose of tilting again the already lifted sound-wave downwards. Professor Henry does not explain how the sound-wave recrosses the hostile lower current, nor does he give any definite notion of the conditions under which it can be shown that it will reach the observer." (pp. 19, 20.)

This passage certainly does not indicate a very clear or correct comprehension of the doctrine of refraction as resulting from simple *differences* in the force or direction of the wind; and the critic has permitted himself to employ the word "is *invented*," notwithstanding that in the Lighthouse Report reasons are given, both from experiment and observation, fully justifying the assumption of an "upper opposing wind."†

Professor Tyndall, with an air of "authority," proceeds: "This, so far as I know, is the only theoretic gleam cast by the Washington Report on the conflicting results which have hitherto rendered experiments on fog-signals so bewildering. I fear it is an *ignis fatuus* instead of a safe guiding light. Professor Henry, however, boldly applies the hypothesis in a variety of instances. But he dwells with particular emphasis upon a case of non-reciprocity which he considers absolutely fatal to my views regarding the flocculence of the atmosphere." (p. 20.)

Professor Henry may here be quoted at length: "That a flocculent condition of the atmosphere, due to the varying density produced by the mingling of aqueous vapor, is a true cause of obstruction in the transmission of sound, is a fact borne out by deduction from the principles of wave-motion, as well as by the experiments of the distinguished physicist of the Royal Institution of Great Britain; but from all the observations we have made on this subject, we are far from thinking that this is the efficient cause of the phenomena under consideration. A fatal objection, we think, to the truth of the hypothesis Professor Tyndall has advanced, is that the obstruction to the sound, whatever may be its nature, is not the same in different directions. We think we are warranted in asserting that in the

cases of acoustic opacity which he has described, if he had simultaneously made observations in an opposite direction, he would have come to a different conclusion. That a flocculent condition of the atmosphere should slightly obstruct the sound, is not difficult to conceive; but that it should obstruct the ray in one direction and not in an opposite, or in a greater degree in one direction than in another, the stratum of air being the same in both cases, is at variance with any fact in nature with which we are acquainted. We would hesitate to speak so decidedly against the conclusions of Professor Tyndall, for whose clearness of conception of physical principles, skill in manipulation, and power of logical deduction, we entertain the highest appreciation, were the facts which were obtained in our investigations of a less explicit character." (*Lighthouse Report*, pp. 116, 117.)

Among several similar observations, the one mainly referred to is the case of a ten-inch steam-whistle at the Whitehead Light-station (about one mile and a half off the coast of Maine), suddenly ceasing to be heard by an approaching vessel within the distance of about three miles. Professor Henry notes that "the wind during this time was from the south, or approximately in an opposite direction to the sound"; a smaller steam-whistle on the vessel being meanwhile distinctly heard at the station. (*Lighthouse Report*, pp. 107, 108.)

The champion of "flocculence," still undaunted, replies: "But the atmosphere was not still, and a sufficient reason for the observed non-reciprocity is to be found in the recorded fact that the wind was blowing against the shore-signal, and in favor of the ship-signal." (*Preface*, p. 21.) How this favors the acoustic-cloud hypothesis is not very apparent. Professor Henry had previously remarked: "At first sight, the explanation of this might seem to be very simple, namely, that the sound is borne on in the one direction and retarded in the other by the motion of the wind. But this explanation, satisfactory as it might appear, cannot be true. Sound moves at the rate of about 780 miles an hour, and therefore, on the above supposition, a wind of 7.8 miles per hour could neither retard nor accelerate its velocity more than one per cent,—an amount inappreciable to ordinary observation; whereas we know that a wind of the velocity we have mentioned is frequently accompanied with a reduction of the penetrating power of sound of more than fifty per cent." (*Lighthouse Report*, p. 106.)

Professor Tyndall continues: "But the argument of Professor Henry, on which he places his main reliance, would be untenable, even had the air been still. By the very aerial reflection which he practically ignores, reciprocity may be destroyed in a calm atmos-

phere. In proof of this assertion, I would refer him to a short paper on 'Acoustic Reversibility' printed at the end of this volume." (*Preface*, p. 21.) The condition, "*even had the air been still,*" is certainly curious, in view of the fact that "the argument of Professor Henry" is based directly on the existence of differences in the velocity of the wind!

The chapter on "Acoustic Reversibility" so confidently referred to, forming "Appendix II.," and the conclusion of the work (pp. 403 – 411), is probably the least satisfactory essay in the volume. The card-board screen experiment, permitting sound to be diffracted around the edge of the card to a nearer point in one direction than in the reverse direction, appears quite foreign to the remarkable case of "non-reversibility" observed by Arago in 1822; and on no known physical principle can it be shown that a flocculent veil in the atmosphere will be "diacoustic" on one side, and "catacoustic" on the opposite side. It is the conception, of a transparent mirror, with a valve so cunningly arranged, that all the rays falling on one side will pass through without obstruction, while all the rays falling on the other side will be reflected back.

And yet, with a complacency that almost seems infatuation, Professor Tyndall continues: "The most remarkable case of non-reciprocity on record, and which, prior to the demonstration of the existence and power of acoustic clouds, remained an insoluble enigma, is there shown to be capable of satisfactory solution. These clouds explain perfectly the 'abnormal phenomena' of Professor Henry. Aware of their existence, the falling off and subsequent recovery of a signal-sound, as noticed by him and General Duane, is no more a mystery than the interception of the solar light by a common cloud, and its restoration after the cloud has moved or melted away. The clew to all the difficulties and anomalies of this question is to be found in the aerial echoes, the significance of which has been overlooked by General Duane, and misinterpreted by Professor Henry." (*Preface*, p. 21.)

It is believed that the real cause of the abnormal phenomena noticed lies much deeper than is here supposed; and that to every unbiassed physicist it can be satisfactorily shown that the true solution of the enigma has been discovered by Professor Henry, and has been as signally missed by Professor Tyndall; * nay, that it has even failed to be rightly understood by him, after having been propounded.

* This subject has been quite recently discussed, in the *American Jour. Science* for January and February.

"If we accept for a moment," says he, "a statement which Professor Henry seems to indorse, that sound-waves of great intensity, when they impinge upon a solid or liquid surface, do not obey the law of incidence and reflection, but 'roll along the surface like a cloud of smoke,' it only increases the difficulty." (*Preface*, p. 23.) There was no occasion for attributing this inexact comparison to Professor Henry. The phrase quoted is from General Duane, who says in his Report: "Upon a large scale, sound does not appear, on striking a surface, to be reflected after the manner of light and heat, but to roll along it like a cloud of smoke." The only "seeming indorsement" in Professor Henry's comment is: "This statement is in a measure in accordance with results which I have previously found," that "powerful sounds tend to diverge laterally to such a degree as to render reflectors of comparatively little use." (*Lighthouse Report*, p. 100.) The statement of Professor Henry is simply one of fact, ascertained by very decisive experiments, the details of which are given in his Report. Nor is this so surprising as might appear, if we consider that the dimensions of a sound-reflector cannot conveniently exceed an average wave-length of sound. Were it possible to construct such a reflector, comparable in this respect to even the very smallest ever employed optically, we should probably have that distinct relation of incidence and reflection observed in light, and proportionately in ordinary sounds within small distances.

If we may judge from Professor Tyndall's earnest invective (rather oddly interpolated into his "aerial echoes"), he has at last triumphantly burst asunder the shackles of "authority" which had previously bound him, and now stands forth disenthralled and exultant.

"The clew to all the difficulties and anomalies of this question is to be found in the aerial echoes, the significance of which has been overlooked by General Duane, and misinterpreted by Professor Henry. And here a word might be said with regard to the injurious influence still exercised by authority in science. The affirmations of the highest authorities, that from clear air no sensible echo ever comes, were so distinct that my mind for a time refused to entertain the idea. Authority caused me for weeks to depart from the truth, and to seek counsel among delusions.* On the day our observations

* On page 258 occurs this remarkable statement: "The publication of Dr. Derham's celebrated paper in the Philosophical Transactions for 1708 marks the latest systematic inquiry into the causes which affect the *intensity* of sound in the atmosphere." This systematic inquiry does not however appear to have been read; for "the affirmation of *this* authority" (however "injurious its influence") is certainly "distinct,"—one hundred and sixty-seven years ago. "I will add also an

at the South Foreland began, I heard the echoes. They perplexed me. I heard them again and again, and listened to the explanations offered by some ingenious persons at the Foreland. They were an 'ocean-echo.' This is the very phraseology now used by Professor Henry; one of the phases of thought then passed through, one of the solutions then weighed in the balance and found wanting, being identical with that which Professor Henry now offers for acceptance. But though it thus deflected me from the proper track, shall I say that authority in science is injurious? Not without some qualification. It is not only injurious, but deadly, when it cows the intellect into fear of questioning it." (*Preface*, p. 22.) To what is all this *apropos*?

This is the very style of protest one is accustomed to hear from some automatic-motor inventor, quadrature discoverer, anti-Newtonian philosopher, or transcendental mathematician intent on showing ("in the absence of all proof to the contrary") that a straight line indefinitely prolonged may possibly cease to be rectilinear. But surely such fervid "air-beating" is scarcely worthy of one who has himself earned the right (perhaps not altogether unconsciously) to speak with some authority on certain topics of science. It is not usually the intelligent and genuine seeker after simple *truth* who feels any occasion for emancipation from the trammels of "*authority* in science." The only thing approaching such sway recognized by the cultured is the deference justly paid to the opinion of experts, in the range of their special explorations. Science has no hierarchy, and hence no dogma. Its domain is absolutely republican.

But when Professor Tyndall declares that "*authority*" caused him to *depart* from the truth, and that "the affirmations of the highest authorities" were "*distinct*," that from clear air no sensible echo *ever* comes, it is to be feared that he has been the unconscious victim of a non-scientific use of the imagination. It may be doubted whether such "*distinct affirmations*" can be found in any authority ("*highest*" or lowest) on the subject of sound. We should as much expect to find the distinct affirmation by an expert in optics, that from the empty ether no luminous reflection ever comes, — a proposition which would yet probably so command the unhesitating assent of Professor Tyndall, that "his mind would refuse to entertain the idea" of its denial. The truth is that the human mind is fortunately

example of the reflection of sound in the air from aerial particles. When I have heard the boom of great guns of war, especially in a clear and tranquil sky, I have quite frequently observed a murmur aloft in the air, preceding the report."—*Phil. Trans.* 1708, XXVI. 2.

so constituted, that it hesitates to adopt a new apprehension not clearly justified by conscious experience ; and Professor Tyndall "for a time refused to entertain the idea" of aerial echoes, doubtless for the same reason that some of his readers will continue to do so, *notwithstanding* his "authority."

Our author continues : "But the authority which so merits our respect as to compel us to test and overthrow all its supports, before accepting a conclusion opposed to it, is not wholly noxious. On the contrary, the disciplines it imposes may be in the highest degree salutary, though they may end, as in the present case, in the ruin of authority." (*Preface*, p. 22.) Authority in science is injurious ; but with this qualification it may be "deadly," or it may be only partially "noxious." An impassive reader may well wonder what fortress of scientific pretension it is which (though "meriting respect") has been so shattered and demolished.

Had some enthusiastic believer in the "authority" of Professor Tyndall proclaimed for his hero, that having invested the fastnesses of "the highest authorities" preceding him,—by the salutary discipline acquired in "testing and overthrowing all the supports" of the besieged,—he had finally achieved a victory ending in the total "ruin of authority," the bulletin would probably be accounted by the judicious as both fulsome and inane. As the utterance of the intellectual Luther himself, it may be left without characterization.

Not the least characteristic feature exhibited throughout this controversial "Preface" is the lofty complacency exhibited by its writer. For example : "With regard to the particular notion which now finds favor with Professor Henry, it suggests the thought that his observations, notwithstanding their apparent variety and extent, were really limited as regards the weather. For did they, like ours, embrace weather of all kinds, it is not likely that he would have ascribed to the sea-waves an action which often reaches its maximum intensity when waves are entirely absent." (*Preface*, p. 23.) The suggestion that Professor Henry probably made observations only during stormy weather, sounds not a little whimsical in reference to investigations on this subject, scattered over ten years, and along hundreds of miles of sea-coast.

Or once more : "Rightly interpreted and followed out, these aerial echoes lead to a solution which penetrates and reconciles the phenomena from beginning to end. On this point I would stake the issue of the whole inquiry, and to this point I would, with special earnestness, direct the attention of the Lighthouse Board of Washington. Let them prolong their observations into calm weather. . . . The

echoes afford the easiest access to the core of this question, and it is for this reason that I dwell upon them thus emphatically. It requires no refined skill or profound knowledge to master the conditions of their production; and, these once mastered, the Lighthouse Board of Washington will find themselves in the real current of the phenomena, outside of which—I say it with respect—they are now vainly speculating.” (*Preface*, p. 24.)

And this attitude of condescending dignity is assumed toward one whom he had recognized while in America as our “scientific Nestor,” and had extolled as being already “in the van of experimental inquiry,” when the banqueted speaker was yet a novice in science.* His placid confidence in his own cherished hypothesis never permits a suspicion that it may possibly lie “outside the real current of the phenomena”; and on his self-consciousness no imagination dawns that the rival hypothesis, so magisterially dismissed by him as an *ignis fatuus*, is really a theory, based upon a series of observed facts, and fertile in suggesting explanations of a range of seemingly incongruous effects, otherwise quite beyond the reach of any existing speculation.

So completely does Professor Tyndall seem to himself to have grasped the subject and exhausted its product, that he concludes: “if Professor Henry will but adopt the same views regarding aerial echoes, the acoustic deportment of the atmosphere in haze, fog, sleet, snow, rain, and hail will be no longer a mystery: even those ‘abnormal phenomena,’ which are now referred to an imaginary cause, or reserved for future investigation, will be found to fall naturally into place, as illustrations of a principle as simple as it is universal.” (*Preface*, pp. 24, 25.)

Professor Tyndall thus epitomizes his labors: “In the years 1873 and 1874 this subject received an exhaustive examination, observational and experimental.” (p. 321.) *Jamque opus exegi*.—“Thus ends for the present, at all events, an inquiry which I trust will prove of some importance, scientific as well as practical.” (p. 319.)

Professor Henry, whose researches on the subject have been much more extensive, — while the Trinity House “has established no facts of practical importance which had not previously been observed and used by the Lighthouse Board,” and who has really made a contribution to our knowledge, of far wider reach and higher value, — in the concluding paragraph of his Report speaks thus: “Much further investigation is required to enable us to fully understand the effects

* Lectures on Light: in U. S. — Am. Ed., 1873 (pp. 10, and 1861).

of winds on the obstruction of sound, and to determine the measure of the effect of variations of density in the air, due to inequality of heat and moisture. But such investigations can only be made under peculiar conditions of weather and favorable localities, with the aid of a number of steamers, and a series of observers, by whom the transmissibility of the air may be simultaneously observed in different directions. . . . It is the intention of the Lighthouse Board to continue observations in regard to this matter, and to embrace every favorable opportunity for their prosecution under new and varied conditions." (*Lighthouse Report*, p. 117.)

Professor Tyndall has failed to realize the practical importance of acoustic refraction; which is unquestionably a real phenomenon, and which may result from two independent causes or conditions. First, there is the refraction occasioned by differences of aerial currents, suggested by Professor Stokes, in 1857; and, second, the refraction occasioned by differences of aerial temperature, pointed out by Professor Reynolds, in 1874. While he is of course fully aware that the velocity of sound is affected by differences of wind, as well as by differences of temperature, he is not aware that an easy calculation will show the resultant deflection to be in many cases quite considerable. Turning to Section 6 of Chapter I., which treats of the "Refraction of Sound," the only illustration of the subject we find is a reference to the experiment of Sondhauss (now nearly a quarter of a century old), showing the convergence of sound to a focus by the use of a carbonic-acid gas lens in a thin membranous envelope." (pp. 19, 20.) This exhausts the subject.

And yet the observations of Professor Tyndall himself furnish evidence on this point, the true significance of which has entirely escaped him. In his experiments at the South Foreland, there were at first employed on the beach, about forty feet above high-water mark, two fog-horns, each eleven feet long, and an air-whistle with six-inch cups; and on the top of the Dover cliffs, about two hundred feet above these, another set of instruments of precisely the same size and power. "Numerous comparative experiments made at the outset gave a slight advantage to the upper instruments. They therefore were for the most part employed throughout the subsequent inquiry." (*Sound*, p. 263.)

Is it not strange that Professor Tyndall's inquisitive mind neglected to search into the meaning of this "slight advantage"? Or was he at once satisfied that flocculent clouds had something to do with it? Here was a difference, — not accidental, — but confirmed by "numerous comparative experiments," and in a direction, too, con-

trary to that which might have been anticipated; for not only were the lower instruments in denser air, and therefore theoretically in a condition to give a louder sound with the same motive-power, but by being near to the resisting and protecting wall of the sea-surface, were favorably placed for distinctly transmitting their sound to a distance: added to which was the extended wall of chalk-cliff, two hundred feet high, immediately behind the instruments, for reinforcing and reflecting the sound-waves seaward.

What, then, is the true explanation of this apparent anomaly? That the stratum of air two hundred feet above the sea was ordinarily (or when still) cooler than that near the surface, is hardly doubtful. Professor Tyndall has stated for us the well-known fact, that "inasmuch as the air above is colder than that below, the actual velocity on the summits of mountains is less than that at the sea-level." (*Sound*, p. 23.) The difference being, at ordinary temperatures, about one foot per second for each degree Fahrenheit. Here, then, with the admitted fact of the lower portion of the sound-wave moving more swiftly than its upper portion, we have the inevitable condition of a flexure of the horizontal rays of sound upward as they advance; and however slight this refraction, as it is continuous or cumulative, in the course of several miles it must make itself felt. Obviously, the limiting point of tangency with the sea, of the upward bent rays of a given curvature, must be much nearer to the lower source of sound than to the upper; and hence while at the distance of ten miles the curved rays of sound from the top of the cliff might reach the deck of a vessel, those from its base would pass considerably above the vessel.

Whenever a sea-breeze should blow toward the fog-signal, as it would commonly be stronger above, and more resisted and lagging below, the refraction would generally be reinforced by the still greater retardation of the upper part of the sound-waves than the lower part. On those rare occasions where neither of these conditions should exist, that is, neither an unequally retarding wind nor a diminished temperature in the upper strata, there can be no doubt that then the lower instruments would prove the more effective.

Allusion has already been made to the "conspicuous absence" of any research into the prominent and familiar fact of the influence of *wind* on sound-range. Dr. Robinson, in his Report on "Fog Signals" in 1863, remarked that "a gun or bell which is heard several miles *down* the wind, is inaudible at more than a few furlongs *up* it." (*Rep. Brit. Assoc.* 1863, XXXIII. 106.) And Professor Tyndall gives his distinct testimony to the fact, that "it is within the mark to say that

the gun on October 11th was heard five times, and might have been heard fifteen times as far to leeward as to windward." (*Sound*, p. 309.) Strangely enough, a result so remarkable and so well determined by repeated observation, receives from him no elucidation, and is left by him without even a suggestion toward interpretation! What conceivable condition or arrangement of "floculence" — that persistent obscurer — could be supposed to have its transparency or opacity to sound multiplied so many times by a simple difference of direction in the wind?

Another instance may be cited of our author's lack of comprehensive insight into the full import of his own observations. He says: "Up to July 3d, all remained enigmatical; but on this date observations were made which seemed to me to displace surmise and perplexity by the clearer light of physical demonstration. . . . At 2.15 P. M., and at a distance of three and three fourth miles from the station, with calm, clear air and a smooth sea, the horns and whistle were sounded, but they were inaudible. Surprised at this result, I signalled for the guns. They were all fired, but though the smoke seemed at hand, no sound whatever reached us. . . . We steamed on in the same bearing to two miles, and had the guns fired point blank at us. The howitzer and the mortar, with three-pound charges, yielded a feeble thud, while the eighteen-pounder was wholly unheard." (pp. 268, 269.) "As I stood upon the deck of the *Irene*, pondering the question, I became conscious of the exceeding power of the sun beating against my back and heating the objects near me. Beams of equal power were falling on the sea, and must have produced copious evaporation." (p. 271.) Hence atmospheric "floculence," and as a result, acoustic opacity. "Curiously enough, the conditions necessary for the testing of this explanation immediately set in. At 3.15 P. M., a solitary cloud threw itself athwart the sun and shaded the entire space between us and the South Foreland. The heating of the water, and the production of vapor, — and air-currents were checked by the interposition of this screen. . . . The sounds, as I expected, were distinctly, though faintly heard. This was at three miles' distance. . . . We pushed the test further by steaming farther out. At five and three fourth miles we halted and heard the sounds; at six miles we heard them distinctly." (pp. 272, 273.)

That this interesting experiment furnished a satisfactory test of something more than aerial "floculence" does not appear to have entered the observer's mind. So preoccupied was his mental vision with a *hypothetical* image, that it had no perception of that *vera causa*,

the necessary refraction of the acoustic rays under the conditions stated, — the lifting of the waves of sound above the listener's head through the heated atmosphere of the July sun; and the subsequent flattening or unbending of these rays as the lower air grew cooler. That the powerful and penetrating sounds of steam-whistles, fog-trumpets, and cannon — having an easy range of a dozen miles — could be absolutely *extinguished* by vapor-clouds at the distance of two miles appears quite incredible. That such sounds might be entirely deflected away, and so become inaudible in a given direction without losing their range, is entirely conformable to what we know. And that the larger amount of vapor in the lower strata of air should also increase this refraction, by rendering the air more absorbent of heat, is no less accordant with the indications of theory.

Professor Reynolds, to whom belongs the credit of this fine exposition, well remarks: "Here we see that the very conditions which actually diminished the [sensible] range of the sound were precisely those which would cause the greatest lifting of the waves. And it may be noticed that these facts were observed and recorded by Professor Tyndall, with his mind altogether unbiased with any thought of establishing this hypothesis. He was looking for an explanation in quite another direction. Had it not been so, he would probably have ascended the mast, and thus found whether or not the sound was all the time passing over his head. On the worst day, an ascent of thirty feet should have extended the range nearly a quarter of a mile." (*Proceedings R. S.* 1874.)

To conclude this somewhat extended review, the judgment must be pronounced that the additional matter introduced into this new or third edition of "Sound" occupies a space very considerably in excess of its real importance. Had the ill-advised preface been suppressed, and the prolix Chapter VII. been condensed into something like its present "summary," the just proportions of the treatise would have been much better maintained. If, in addition to this, the section on "Refraction of Sound" had been extended and enriched with the pregnant results of the researches of Professor Henry and of Professor Reynolds, the value of the work as an exposition of the present state of the science of acoustics would have been greatly enhanced.

2. — *Roderick Hudson*. By H. JAMES, JR. Boston : J. R. Osgood & Co.

IF the authorship of "*Roderick Hudson*" were a secret, we think few people would guess it to be a first novel. It has little of the freshness and none of the crudeness of most such attempts. Its merits and its interest are not such as usually gush from a new-found spring of talent, while its faults are not those of youth and inexperience. Yet the reading public would be puzzled on whom to fix it. Anonymous productions of so much ability are immediately assigned to half a dozen well-known writers, with more or less plausibility ; the book in question reminds us of no other ; Mr. James has imitated nobody ; the only novelist to whose temper of mind there is the least affinity is Thackeray, and few writers resemble one another less. Therefore, to begin with, if "*Roderick Hudson*" is not what can be called an original work of genius, it is entirely peculiar. As far as one can describe a book in a single phrase, this one is a study of character. There is no plot, strictly speaking ; the slight framework which supports the personages being the career of a young village genius who is taken by a munificent acquaintance from the purgatory of a law-office in his native Northampton to study sculpture in Rome. The story follows him, and three or four others whose common tie is in him, through the hopes and fears, the promise and disappointment, of his course. These three or four are, first, Rowland Mallet, the hero's friend and patron ; Mary Garland, his cousin and betrothed ; Christina Light, his fate : there are several other characters of less importance who are quite as carefully and minutely drawn. There is too much of this minuteness, too much detail. It was not necessary to our comprehension of Rowland Mallet that we should be told all about his father and mother, his grandfather and grandmother, as he inherited nothing from them, except, perhaps, from the last his Dutch coloring and phlegm ; but that stolid quality in him becomes an amiable longanimity, not always maintained without struggle ; so that we must set down as works of supererogation those two delightful portraits of the silent sea-captain with his weather eye always to windward, and the good housewife who sought consolation for her lost Holland in having the front pavement scrubbed and scoured. And why, as the cousin Cecilia had no part to play in the book, is she so conspicuous a figure ; and why, since she is so nice a woman, does the author of her being like her and let us like her so little ? With her, the Cavaliere Giacosa, and one or two more, it looks as if Mr.

James had had these admirable studies in his sketch-book and could not resist transferring them to his canvas, although they have as little to do as lay-figures, or at best the *deus ex machina*. There are no lay-figures in Mr. James's compositions; the perfect finish of each part is like nothing but some performances we once saw given by the leading actors of the Théâtre Français in London, during the Commune, when Bressant and Delaunay appeared as walking gentlemen, and Got, the manager, merely brought in a letter on a salver. There is in this elaboration a trace of the influence of M. Tourguénieff, of whom Mr. James is an admirer and student, but the effect is very different from that of M. Tourguénieff's simply grouped supernumeraries.

The central figure, of course, is Roderick Hudson, and we foresee that the indiscriminating will fancy a resemblance between him and Hawthorne's Donatello, but it is scarcely skin-deep. The irresponsibility of the Faun is his greatest attraction, it is Roderick Hudson's most intolerable vice. The character of the hero strikes us as the great failure of the book; the conception is capital and is consistently carried out; but in working it up there occur traits of selfishness and shamelessness which, although natural in themselves, make the relations of others to him unnatural. His personal charm is not felt by us, while his detestable egotism is; we are repelled, and the friendship of Rowland, the constancy of Mary, and even the idolatry of his mother, seem like infatuation. This is a cardinal error, for it leaves the reader outside the sympathies of the whole circle; he has no hold on the electric chain which binds them together. It is due in great part to this, no doubt, that their wonderfully told vicissitudes of feeling leave us cold; it is not that they are unlike real people; they are most real and living, but we do not identify ourselves with them; we never for a moment cease to be spectators; we are intellectually interested, but as unmoved as one may suppose the medical class of a modern master of vivisection to be. Rowland is not meant for the hero, and, like him as we must, we cannot concentrate our sympathies on the second fiddle; at the same time we are very grateful for such a delightful, possible character, if he be not impossibly good; one almost loses patience sometimes with his patience. The heroine is a very fine outline, defined like all the rest with extreme distinctness, but there is a plainness about her which unfits her for her position; it is improbable that a woman so devoid of all but moral grace, and with less of that than positive loftiness, should attract a man of Rowland's cultivation and civilization; there is a similar improbability in Hannah Thurston, which takes the lifelikeness out of that sober picture of American local manners. The noble,

almost barbarous integrity of Mary Garland is a fine foil to the intricacy of Christina; although much of that young lady's complexity is studied, she is none the less true to nature, which in her means artifice. In her case, as in Roderick's, the beauty and charm which make them irresistible in personal intercourse are lost upon the reader; one feels that she does not deserve the excuses the good-natured Rowland makes for her; if her education and examples have been bad, she is worse; in her better moods she only coquets with her conscience and higher instincts, as other women occasionally coquet with their lower ones; it needed no pinch of fate to make her close the compact with the world, the flesh, and the Devil.

The most faultless character-piece in the whole is Roderick's mother, who is no creation, but a commonplace woman, such as is to be met incessantly both in real life and books; she is given here with a fidelity, a precision and perfection of touch only equalled by some of George Eliot's average women. But not on her only, on Sam Singleton the sincere little painter, on Mme. Grandoni, Mrs. Light, on everybody whom he introduces, has Mr. James bestowed the finest finish; on no one more than on Mr. Barnaby Striker, the Northampton lawyer, and Mr. Leavenworth, the self-made millionaire. The success of these last types is quite sickening; they are true to the life, without a shade of caricature, and one of the most subtle but unsparing strokes in the whole handling is that they are in the right when pleasant people are mistaken. We cannot give a better sample of the completeness of Mr. James's work than by citing the scattered sentences in which he makes known Miss Blanchard, a tertiary personage, between whom and Rowland there have been possibilities of marriage, faint and vague in his imagination, more positive to hers. "She was an American, she was young, she was pretty, and she had made her way to Rome alone and unaided. . . . Miss Blanchard had a little money, but she was not above selling her pictures. These represented, generally, a bunch of dew-sprinkled roses, with the dew-drops very highly finished, or else a wayside shrine and a peasant-woman with her back turned, kneeling before it. She did backs very well, but she was a little weak in faces. Flowers, however, were her specialty; and though her touch was a little old-fashioned and finical, she painted them with remarkable skill. Her pictures were chiefly bought by the English. . . . She talked in a sweet, soft voice, used language at times a trifle superfine, and made literary allusions. These had often a patriotic strain, and Rowland had more than once been irritated by her quotations from Mrs. Sigourney in the cork-woods of Monte Mario, and from Mr. Willis among

the ruins of Veii. Rowland was of a dozen different minds about her, and was half surprised at times to find himself treating it as a matter of serious moment whether he liked her or not. . . . He used sometimes to go into the little, high-niched, ordinary room which served her as a studio, and find her working at a panel six inches square, at an open casement, profiled against the deep blue Roman sky. She received him with a meek-eyed dignity that made her seem like a painted saint on a church-window, receiving the daylight in all her being. The breath of reproach passed her by with folded wings. . . . Rowland reflected that he had never varied in his appreciation of Miss Blanchard's classic contour, but that somehow, to-night, it impressed him hardly more than an effigy stamped upon a coin of low value. . . . He congratulated her upon her engagement, and she received his compliment with a touch of primness. But she was always a trifle prim, even when she was quoting Mrs. Browning and George Sand, and this harmless defect did not prevent her responding on this occasion that Mr. Leavenworth had a 'glorious heart.' There is not a name in the book but is the ticket to something as clear cut and closely wrought as this. But what do all these animated varieties of men and women do? They do nothing but talk. There is as great a want of incident as of plot. Their conversations are amazingly clever, and bring out the dispositions of the speakers with consummate skill.

"Ah, study?" repeated Mr. Striker. "To what line of study is he to direct his attention?" Then suddenly, with an impulse of disinterested curiosity on his own account, 'How do you study sculpture, anyhow?'

"By looking at models, and imitating them."

"At models, eh? To what kind of models do you refer?"

"To the antique in the first place."

"Ah, the antique," replied Mr. Striker, with a jocose intonation. "Do you hear, madam? Roderick is going off to Europe to learn to imitate the antique."

"I suppose it's all right," said Mrs. Hudson, twisting herself in a sort of delicate anguish.

"An antique, as I understand it," the lawyer continued, 'is an image of a pagan deity, with considerable dirt sticking to it, and no arms, no nose, and no clothing. A precious model certainly!'

"That's a very good description of many," said Rowland, with a laugh.

"Mercy! Truly?" asked Mrs. Hudson, borrowing courage from his urbanity.

"But a sculptor's studies, you intimate, are not confined to the antique," Mr. Striker resumed. "After he has been looking three or four years at the objects I describe —"

"He studies the living model," said Rowland.

"Does it take three or four years?" asked Mrs. Hudson, imploringly.

"That depends upon the artist's aptitude. After twenty years a real artist is still studying."

"O my poor boy!" moaned Mrs. Hudson, finding the prospect, under every light, still terrible.

"Now this study of the living model," Mr. Striker pursued; "inform Mrs. Hudson about that."

"O dear, no!" cried Mrs. Hudson, shrinkingly.

"That, too," said Rowland, "is one of the reasons for studying in Rome. It's a handsome race you know, and you find very well-made people."

"I suppose they're no better than a good tough Yankee," objected Mr. Striker, transposing his interminable legs. "The same God made us."

But the conversations are often too prolonged, and the author endows all his personages with his own turn for analyzing, in consequence of which they all occasionally talk alike, blurring for the moment their individuality. The effect of this perpetual analysis is fatiguing; the book never ceases to interest, but it taxes the attention like metaphysics. There are signs that it occasionally wearied the author; while such pains and care are bestowed upon his characters, his style is sometimes slipshod. He says, "deceased brother" for "dead brother," and uses other equally objectionable expressions; how else did he come to write such a sentence as the following? "She herself was a superior musician, and singers found it a privilege to perform to her accompaniment." On the same ground we account for his putting the same word into everybody's mouth, "hideous" for instance, which Christina, Rowland, and Roderick all use at different times in a moral sense, yet which is not a common word so applied. This, however, is allied to an old fault of Mr. James's, which is the repetition of one striking word or phrase until it loses its force; the word "formidable" is unusual and impressive, but it occurs so often in the latter part of the present book that any other would express as much; there is so much about "passion" and "passionateness" that at length the fervid sound falls coldly on the ear of the unimpassioned reader. This is curious carelessness in a writer of such remarkable flexibility of thought and plastic power of expression. His control of language is like the facility of a great pianist; there is no turn or running accompaniment of thought, no cadence, no modulation, that is not executed with the easiest precision. His language owes something of its malleability to his command of French; but this sometimes carries him too far into constructions that are not idiomatic, and a use of words which is not in the genius of the mother tongue, as, for instance, his favorite "supreme," which he

sometimes takes in its English significance of highest, and sometimes in its French meaning of final.

It was to be expected that more would be made of the background and side-scenes in a story whose action goes on chiefly in Rome and Florence, but Mr. James has refrained with almost stoical firmness from the opportunities and temptations which they offered. Readers of his tales and sketches of travel will find but few of those incomparable passages, half descriptive, half suggestive, in which the psychological bearings of outward things are so delicately hinted; he has done wisely, no doubt, in using his exquisite gift sparingly, and wherever these bits occur they greatly enhance the situation.

Looking at the book as a whole, it is like a marvellous mosaic, whose countless minute pieces are fitted with so much skill and ingenuity that a real picture is presented, but with an absence of richness and relief, of all that is vivid and salient; there is a pervading lowness of tone, and flatness of tint. This should not be the impression left by a novel of remarkable talent; we think, however, that it is not the result of a failure to produce the desired effect, but of a mistaken aim. The method, too, is a mistaken one; no aggregate of small particles, however cunningly put together, will produce the effect of honest cutting and shaping from the piece; it may be *marqueterie*, or a Chinese puzzle, but it will not be art. Moreover, such work has the disagreeable property of making criticism seem like picking to pieces.

From these strictures the last two chapters must be excepted. The story has the immense merit of rising to a climax at the end; there is more breadth and movement in the final twenty-five pages than in all the rest of the book. We have heard it objected, that Mr. James has resorted to a hackneyed expedient for getting rid of a troublesome hero; but there is nothing hackneyed in his way of using it. The effect falls short of what it might have been, because author and reader are still left looking on, curious, speculative, philosophical; we stand apart and watch the working of Rowland's anguish, and note the "magnificent movement" of Mary Garland's despair. But the close of Roderick Hudson is beautiful, powerful, tragical; it is intense, yet not overstrained; all it lacks is to have been told with more human feeling.

3. — *Insectivorous Plants*. By CHARLES DARWIN, M. A., F. R. S.
With Illustrations. New York: D. Appleton & Co. 1875.

WE have all been long familiar with the remarkable insect-catching properties of the North Carolina *Venus's Fly-trap* (*Dionæa muscipula*),

and have looked with a curious interest at the pictures of its closed leaves with their chevaux-de-frise of marginal spikes, crossed over the body of a captured fly. This was generally regarded as a sort of singular accident, or at least as an exceptional phenomenon, quite peculiar to *Dionæa*; and beyond occasional speculations as to whether the trapped insects were utilized in any way for the nutrition of the plant, but little attention was paid to the subject, and it was not considered a matter of any great importance.

But for the last ten or fifteen years evidence has been accumulating among botanists that this occurrence is neither so rare nor so unimportant as was formerly supposed. The capture of insects by *Dionæa*, instead of being an occasional accident, is a constant and habitual phenomenon. Many different kinds of insects and other articulates are taken in this way. Dr. Canby, of North Carolina, collected fourteen leaves of *Dionæa* growing in its natural site, all of which had caught their prey, including altogether one fly, three ants, one spider, one centipede, and eight beetles. According to the observations of Dr. Canby, as well as those of Mrs. Treat of New Jersey, the same leaf will sometimes re-expand and capture a second or even a third insect, after disposing of the first. It is certain that the insects thus caught are not only employed for the nutrition of the plant, but that this is a main source of supply of the nitrogenous material required for its tissues. Similar facts have also been observed in other species of plants; and the capture of various kinds of articulate animals, in greater or less abundance, as a means of livelihood so to speak, is now fairly recognized as a natural phenomenon, not only in *Dionæa*, and in six or seven different species of Sundew, but also in *Aldrovanda*, *Drosophyllum*, *Roridula*, *Byblis*, *Pinguicula*, *Utricularia*, and *Genlisea*. It appears that these are in reality insectivorous plants. They possess certain organs of such structure and properties that they inevitably, in the natural course of things, attract, seize, and destroy their animal prey, as regularly and systematically as the spider captures his fly. In the case of *Dionæa* this is accomplished by the sudden trap-like closure of the irritable leaves. In other instances, as in that of the Sundew, the clasping movement is a slow one; but the insect is held entangled by a viscid secretion, and so gradually embraced by the bending filaments. Sometimes, as in *Byblis*, *Roridula*, and *Drosophyllum*, where there is no movement of the leaves, it is their viscid secretion alone which effects the capture, like so much bird-lime. In *Pinguicula*, there is both a viscid secretion and a movement of the leaves. Two of the species mentioned, namely, *Aldrovanda vesiculosa* and *Utricularia vulgaris*, are water-plants; they entrap, of course,

aquatic animals, mostly crustaceans, worms, and various insect larvæ. In *Utricularia*, the capturing apparatus is an irregularly hemispherical bladder, provided with a sort of valve, opening inward. This valve the intruder easily pushes aside on entering; but it closes again and imprisons him securely when he is once in. Mr. Darwin found, on one occasion, as many as ten little crustaceans in a single bladder of *Utricularia neglecta*; and Professor Cohn, of the Institute of Physiological Botany at Breslau, after immersing a fresh plant of *Utricularia vulgaris* in water abundantly inhabited by crustaceans, found the next day nearly all its bladders containing captured prey.

Mr. Darwin's attention was first directed to the insect-catching properties of the Sundew in 1860. His very numerous and careful observations have accordingly extended over a period of several years; and their results are recorded, in a systematic form, in the present volume. All the plants now known or reasonably suspected to be insectivorous are described at some length, but the most elaborate and original portion of the book relates to the Sundew; and we shall confine ourselves mainly to the investigations of the author on this species and its singular habits of life. The method of observation employed, and the manner in which its results are given to the reader, form a model for investigations of this kind. Everything is both done and told with a precision which leaves nothing to be desired; and no one can read the book without a sense of genuine satisfaction, at acquiring a knowledge so definite and based upon data so clearly and accurately stated. A few examples may be selected from among many, to illustrate this feature, which is a prominent one throughout. In speaking of the movement of the leaf-tentacles, when excited by the contact of raw meat, the author says (page 24):—

“Another tentacle, similarly treated, distinctly though slightly changed its position in ten seconds. In two minutes and thirty seconds it had moved through an angle of about 45° . In five minutes it had moved through 90° . And when I looked again, after ten minutes, it had reached the centre of the leaf; so that the whole movement was completed in less than seventeen minutes and thirty seconds.”

On page 236, after enumerating various trials to determine the mode of transmission of the exciting impulse through a leaf, he says:—

“In ten other experiments, minute bits of meat were placed on a single gland or on two glands in the centre of the disk. On eight of these leaves, from sixteen to twenty-five of the short surrounding tentacles were inflected in the course of one or two days. On the two

remaining leaves, almost all the short tentacles of the disk were inflected."

While estimating the vigor with which the tentacles bend, under the influence of a stimulus, he says (page 254) :—

"The exterior tentacles, considering their delicacy, are inflected with much force. A bristle, held so that a length of one inch projected from a handle, yielded when I tried to lift with it an inflected tentacle, which was somewhat thinner than the bristle."

The plant, upon which most of Mr. Darwin's observations were made is the Round-leaved Sundew (*Drosera rotundifolia*). The corresponding American species, which bears the same name, if not absolutely identical with the English, resembles it so closely that it may easily be recognized from a description common to both. It is a low, perennial, herbaceous plant, growing in open upland bogs, and presenting a little cluster of five or six leaf-stems with rounded disk-like leaves, usually spread out in a nearly horizontal position. The leaves are provided, on their upper surfaces, with numerous, reddish-colored, gland-bearing bristles, or filaments, to which Mr. Darwin gives the name of tentacles, from their power of moving or bending, like the tentacles of an invertebrate animal. The gland situated upon the extremity of each tentacle is surrounded by a little globule of clear, colorless, viscid secretion; and these globules glitter in the sunshine like so many dew-drops, whence the name of the plant itself. Notwithstanding its unobtrusive appearance and delicacy of texture, the Sundew is probably as rapacious a destroyer of insects, in proportion to its size, as *Dionæa*. In a dozen plants collected at random, and bearing, in all, fifty-six fully expanded leaves, Mr. Darwin found that thirty-one leaves, that is, more than fifty-five per cent of the whole, had adhering to them dead insects or their remains. In one plant, every one of its six leaves had caught an insect. In many instances the same leaf had caught more than one; and in one case the remains of no less than thirteen distinct insects were found upon a single leaf.

The mechanism of the capture, in *Drosera*, is as follows :—

The insect, usually a small fly, attracted perhaps by the aspect or odor of the plant, alights near the centre of the leaf, upon some of the short tentacles situated at that part. Its feet are entangled by the viscid exudation; and as they sink into it, they touch, ever so lightly, the glands by which it is secreted. The central tentacles, with which the intruder first comes in contact, do not, as a rule, themselves change their position. But from them, as soon as their glands are stimulated by the touch of a foreign body, an impulse is sent outward, through the intervening tissues, to the longer tentacles about

the margin of the leaf. These begin slowly to curve inward; and, by bending over from all sides toward the centre, they reach in succession the body of the insect, and at last close round him in a circle from which there is no escape. Each gland at the same time secretes more abundantly than usual; and the viscid fluid, which covers the insect, blocks up his breathing-pores, and no doubt kills him by suffocation.

This remarkable fact, of the transmission of a motor impulse from one part of the leaf to another, is one of the most important results established by Mr. Darwin's observations. The evidence of its reality appears to be unquestionable. The parts immediately endowed with the power of motion are the filamentous portions, or pedicels, of the tentacles. But these organs are not directly irritable; and a mechanical stimulus, applied either to their surfaces or their substance, does not cause them to bend. They were roughly and repeatedly rubbed, and bits of raw meat or other exciting substances were placed upon them at various points, without producing any distinct movement. Wounding the blade of the leaf with a lancet, or pricking it repeatedly with a needle, was equally ineffective. On the other hand, a bit of soft cotton thread, or, better still, a piece of human hair, or a fragment of pounded glass, weighing respectively from $\frac{1}{80000}$ to $\frac{1}{70000}$ of a grain, if placed in contact with one of the exterior glands, will cause its pedicel to bend through an angle of at least 180° . Small bits of meat were left for a considerable time on the pedicels without perceptible effect; but if they were then pushed upward, so as just to touch the glands, in a minute the tentacles began to bend.

Even here, the impulse which produces motion is transmitted through a considerable distance, amounting to nearly twenty vegetable cells placed end to end; for the part of the pedicel which actually bends is not that in immediate proximity to the gland, but the portion near its base. Throughout its upper two thirds the pedicel remains straight, or nearly so, and is only carried inward by the curvature of its basal portion. The fact of transmission is still more evident when the exterior tentacles become inflected without either their pedicels or glands being touched at all. If the central glands of a leaf be irritated by repeated contact of a stiff camel's-hair brush, the marginal or submarginal tentacles bend inward. Particles of meat, dead flies, bits of dried moss, cinders, or pounded glass, if placed on the central part of a leaf, are well embraced by its outer tentacles in periods varying from one to twenty-four hours. Consequently the impulse, in these cases, must have travelled from the central glands, down the whole length of their own pedicels, and across the intervening part of the leaf-blade, to the pedicels of the exterior tentacles.

Such a phenomenon at once recalls the transmission of motor impulses by the nervous system of animals; and it has been therefore assumed, in some quarters, that organs analogous to nerves, in structure as well as in function, must exist in the vegetable tissue. But this assumption is unwarranted by any direct evidence, and is quite unnecessary for a satisfactory explanation of the facts. When a motor impulse is transmitted, in the animal body, from one part to another, the nerve fibre which is the organ of communication is thrown into a state of polarity throughout its length, thus causing a visible contraction in the muscle where it terminates. This is the regular and physiological process by which during life the muscles are called into activity. But a muscular fibre may be made to contract experimentally, by an artificial stimulus applied to its own substance. Now, suppose the touch of a stiff hair or a bit of pounded glass to excite, in a gland of the Sundew, some change in the molecular condition of its contents. This change would produce no visible movement in the gland itself, because the tissue of the organ is not contractile; but it might cause a similar change in the contents of the next succeeding cells, and so on, reaching at last the base of an exterior tentacle. Here it meets with contractile tissue, and a movement consequently takes place. The contractile tissue of the pedicel may be excitable by a molecular change in the contents of adjoining cells, though not by a mechanical stimulus applied to its own substance; just as the fibres of the optic nerve, which are insensible to the direct action of light, may be excited to activity by a luminous ray falling on the retina. Many varied and elaborate experiments were performed by Mr. Darwin on the rapidity of this transmission of the motor impulse in *Drosera*, the direction which it follows in different cases, and the special tissues of the leaf through which it is effected; but the most interesting fact, in connection with vegetable physiology, is that of its existence.

The immediate mechanism of movement in the tentacles is not clearly understood; and the same may be said of the motions, whether excited or periodical, known to be exhibited by other plants. Notwithstanding the interest which attaches to these movements, and the repeated attempts at their investigation, in the leaves of the Sensitive plant and the Wood-sorrel, and in the stamens of the Thistle family, no fully satisfactory theory of their production has yet been reached. There is evidence that the movement is accompanied by increased or diminished turgescence of the cells in various parts of the moving organs; and it has even been demonstrated, in some instances, that fluids exude from the cells of the part which

contracts and accumulate in those which expand. But is this fluid expelled under an active compression exerted by the cell, or does the cell wall shrink from its own elasticity because the fluids are discharged by a sudden action of exosmosis? Do the cells which are distended become so because they attract additional fluid by endosmosis, or are they simply receptacles, into which the fluid finds its way when expelled from other parts? It is just at this point that all explanations fail. Mr. Darwin is inclined to connect the power of movement in the tentacles of *Drosera* with another internal phenomenon, namely, that of "aggregation," so called; a remarkable conglomeration in distinct masses of the protoplasmic matter of the cell-contents. This aggregation takes place in the cells, both of the glands and their pedicels, simultaneously with the bending of the tentacles, and again disappears when the tentacles re-expand. The author suggests that the contraction of the cell wall may be due to an action of the same kind with that which causes aggregation in the albuminous contents of the cell cavity, namely, an approximation of its molecules. Still, this process is neither an indispensable requisite nor a determining cause of the motion, of the tentacles; since aggregation may occur, under some conditions, without movement, and movement may take place without aggregation. It is certain that the concave portion of a bending tentacle is in a state of active flexion, and is not simply pushed over by the turgescence of its convex side. Mr. Darwin on one occasion succeeded in snipping off with a pair of scissors the convex surface of an inflected tentacle; when the curvature of the remainder immediately became more pronounced, and went on increasing until it formed a complete circle. Neither in this case nor in any other was it possible to detect any wrinkling of the surface of the tentacle at the bending part, or of the cells in its interior; though they might be expected to show such a wrinkling if they were simply collapsed from an exosmosis of their fluids. After all, the only thing we really know of the contraction of the tentacles, so far at least as regards its mechanism, is that they contract. The tissues on the concave side are of course diminished in volume and those on the convex side are increased; but it is not evident how these changes in condition are effected, or in what way they are related to each other.

Although the tentacles are more or less stimulated to movement by any solid object left in contact with the glands, there is a great difference in the intensity of the action caused by substances of different kinds. The most efficient stimulants are those which contain nitrogenous organic material capable of being dissolved by the secretions of the plant; and of all these substances, raw meat acts with

the greatest promptitude and energy. Thus particles of glass, coal-cinder, gold-leaf, cork or blotting-paper, though they sometimes became well embraced by the exterior tentacles, often acted irregularly, or caused only slight and slow movement; while minute flies or bits of raw meat, afterward placed on the same leaves, produced rapid and complete inflection. A similar difference of action was shown by nitrogenous and non-nitrogenous matters dissolved in water. Solutions of gum arabic, of starch, of sugar, olive oil, and even dilute alcohol produced no movement; the same leaves, in some instances, becoming afterward closely inflected, when treated with bits of meat. On the other hand, drops of milk, of albumen from the egg, of infusion of meat, mucus, saliva, and solutions of gelatine all acted with decisive effect. Altogether, trials with these nitrogenous fluids were made upon sixty-four leaves; out of which number sixty-three had their tentacles well inflected in consequence of the application. The influence of nitrogenous fluids is shown still more distinctly in the numerous experiments with watery solutions of the ammoniacal salts; since these substances act in surprisingly minute quantity and dilute form. The carbonate, nitrate, phosphate, and sulphate of ammonia were all tried, as well as several salts of ammonia and the organic acids. Of these substances, phosphate of ammonia was by far the most active, or at least produced a perceptible result when used in the smallest quantity; but all of them were extremely efficient in causing inflection of the tentacles. Thus there is a decided difference in action between nitrogenous and non-nitrogenous organic solutions. The former, as a rule, cause inflection of the tentacles, the latter do not. Mr. Darwin, however, enumerates, on page 78, among the non-nitrogenous liquids, infusion and decoction of tea-leaves, as well as solutions of theine, which he found to be inoperative. But theine is a nitrogenous substance, having the formula $C_8 H_{10} N_4 O_2$. We are at a loss to account for this curious oversight.

The most interesting fact shown by Mr. Darwin, next to the excitability of the glands and the movement of the tentacles, is that solid nutritious matters, placed upon the leaves, are actually *digested*. This is accomplished by means of an acid fluid secreted by the glands; a sort of gastric juice, produced, like that of animals, under the influence of the contact of digestible matters with the secreting organ. The secretion of the glands of *Drosera*, in their unexcited condition, is, as we have seen, viscid, transparent, and colorless. It is neutral in reaction, or only occasionally and faintly acid. The fluid surrounding the glands on thirty different leaves was tested with litmus paper; and in twenty-two of these leaves no perceptible acidity

was present. In the remaining eight there was some evidence of an acid reaction, but this was exceedingly feeble and sometimes doubtful. The case is very different with glands which are excited by the contact of solid substances, either organic or inorganic. Fourteen leaves, in which the secretion was free from any perceptible trace of acidity, were treated, some with particles of broken glass, others with cubes of coagulated albumen, others with bits of raw meat; and when, after twenty-four hours, their tentacles had become more or less completely inflected, the secretion was found to be distinctly acid. The secretion becomes acid, not only on the glands at the centre of the leaf where the foreign substances are placed, but also on those of the marginal tentacles while yet in process of inflection, before they have reached the central part, and consequently before they have themselves touched the exciting substance. Thus the stimulus which causes secretion, as well as that which produces movement, may be transmitted from one part of the leaf to another, through the intervening tissues. Mr. Darwin testifies that he has tried "hundreds of times" the secretion on the disks of leaves which were inflected over various objects, and has never failed to find it acid. This reaction increases in intensity after the tentacles have remained for some time closed over a foreign substance.

The specific character of the acid thus produced was not fully ascertained. Various trials were made by Professor Frankland to determine its nature, but without complete success, owing to the small quantity obtainable for experiment. It was shown, however, to be neither hydrochloric, sulphuric, oxalic, tartaric, nor formic acid. The evidence on the whole indicated that it was probably an organic acid, similar in character to the acetic or the fatty acids.

The effect of the continued action of this acid secretion upon solid nutritious substances is that they become softened and dissolved, and the liquefied materials are afterward absorbed. The method used for investigating this point was similar to that employed in experiments with the gastric juice of animals. Small cubes of coagulated albumen, with their edges and angles sharply cut, were placed upon the leaves and examined at various times after having been clasped by the tentacles. After some hours their edges and angles were rounded off, the masses themselves being enveloped in a transparent fluid. In about two days they were often completely liquefied; and later still both the cubes and the fluid had disappeared. Bits of coagulated fibrin, of delicate areolar tissue, and even of cartilage, were affected in a similar way. Small pieces of roasted meat were softened and liquefied from the surface inward, the muscular tissue being gradually

disintegrated and the fibres losing their characteristic transverse striations. As a rule, the albuminous and albuminoid substances, and digestible tissues composed of them, were found to undergo liquefaction; while the epidermic tissues, such as nails, hair, and feathers, and non-nitrogenous organic matters, such as solid fat, starch-grains, and cellulose, were unaffected, though left in contact with the leaves for four or five days. The acid secretion of the Sundew accordingly shows a striking analogy, both in its properties and action, with the gastric juice of animals, which is also acid, and which digests albuminous matters, but leaves starch and cellulose unchanged.

The analogy is carried still further by the fact that its acid reaction is essential to the digestive power of the Sundew secretion; and that this power may be temporarily arrested by neutralizing its acidity, and again brought into action by the addition of another acid. Solutions of carbonate of soda were used for the purpose of neutralizing the acid reaction, and dilute hydrochloric acid for restoring it. Cubes of albumen, which remained in the first case unaltered for twenty-four hours, were nearly or quite dissolved by the next day, after the secretion was again made acid.

Thus it appears that the plant not only seizes and holds animal matters brought in contact with its leaves, but it also digests them; that is, reduces them to the liquid form in which they are fitted for absorption. The author believes that the secretion by which this is accomplished resembles in all respects the gastric juice of animals; that it acts by virtue of containing a ferment like the pepsin of the gastric juice; and that, as he expresses it, the ferment in both cases is closely similar, if not identically the same.

This, we think, is doubtful. Indeed Mr. Darwin, in this part of his book, seems to have been led into a singular confusion with regard to the combined action of an acid and a ferment, and the experimental evidences of their existence. On page 94 he says: "The best and almost sole test of the presence of some ferment analogous to pepsin in the secretion appeared to be to neutralize the acid of the secretion with an alkali, and to observe whether the process of digestion ceased; and then to add a little acid, and to observe whether the process recommenced. This was done, and, as we shall see, with success."

And again, on page 96: "From these experiments we clearly see that the secretion has the power of dissolving albumen; and we further see that if an alkali is added the process of digestion is stopped, but immediately recommences as soon as the alkali is neutralized by weak hydrochloric acid. Even if I had tried no other experiments than these, they would have almost sufficed to prove that the glands of

Drosera secrete some ferment analogous to pepsin, which, in presence of an acid, gives to the secretion its power of dissolving albuminous compounds."

It is hardly necessary to say that these experiments do not prove in the least the existence of a ferment in the secretion of *Drosera*. They only show that the presence of an acid is essential to its digestive action, which is suspended if it be rendered neutral or alkaline. In the gastric juice of animals, the pepsin, or organic ferment, may be thrown down as a visible precipitate by the action of heat or of alcohol. The secretion, thus deprived of its pepsin, is powerless for digestion, though it may still be acid; and the pepsin-precipitate, when redissolved in water, will again exert its digestive power, if the solution be slightly acidulated. This palpable demonstration of a ferment in the gastric juice, as equally essential with its acid ingredient, is wanting in the case of the Sundew secretion. It might be difficult to carry out such an experiment with the secretion of *Drosera*, owing to the minute quantity to be obtained. Mr. Darwin cut off a large number of leaves which had been moderately excited by the contact of pounded glass, and obtained from them a watery extract of slightly acid reaction, which he tested by immersing in it cubes of albumen, to see whether they would be digested, but without success. He accounts for the failure by supposing that the secretion of the ferment requires a previous absorption by the glands of soluble animal matter; but, at all events, it was not obtained in this way. The only evidence for the existence of a ferment in the secretion of the Sundew appears to be the fact that this secretion will dissolve small quantities of solid albuminous matters; and these substances are digested, so far as we know in animals, only by aid of such a ferment. But this evidence is hardly more than inferential.

In point of fact, digestion by the gastric juice, in animals, is something more than a simple solution. The albuminous matters are not merely liquefied. They are chemically changed, and converted into a new substance, the so-called "albuminose" or peptone; and this substance is distinguishable from albumen or fibrin by definite characters. Coagulated fibrin, if subjected to the action of a dilute acid alone, with the aid of continuous warmth, will be softened and gelatinized, and after a time dissolved; but it is not converted into albuminose, and may be precipitated again by neutralizing the fluid with an alkali. On the other hand, if pepsin be present it undergoes a true digestion, and is no longer precipitable by an alkali. This is an essential feature of the digestive process, and is important for the nutrition of the animal. For if the digested matters in the stomach

were simply held in solution by an acid fluid, when absorbed into the circulation they would be precipitated by contact with the plasma of the blood, which is alkaline. It is possible that in plants this necessity does not exist, since the juices of the vegetable parenchyma have generally or always an acid reaction.

All things considered, we cannot help thinking that the analogy between the secretion of *Drosera* and the gastric juice of animals, in Mr. Darwin's book, is too closely drawn. They are no doubt alike in function, so far as regards the disintegration and liquefaction of nutritious material. But their identity of composition is far from being demonstrated; and especially the evidence of an organic ferment in the vegetable secretion is very imperfect, as compared with that of pepsin in the gastric juice.

The whole subject of the capture and digestion of insects by plants is a most interesting one, and shows another remarkable relation between the two organic kingdoms. Insects suck the juices of plants, and lay their eggs in the leaves or under the bark, and so take their pay for services rendered in fertilizing the flowers. But plants also devour insects, and make up for their scanty roots or insufficient soil by absorbing albuminous matter ready made from the bodies of their victims. Do plants also feed upon each other? Mr. Darwin found that the Sundew leaves certainly injure seeds left in contact with them, perhaps by absorbing some of their organic ingredients. This is still more probable in the case of *Pinguicula*, or Butterwort; the leaves of which, by means of their viscid secretion, catch not only insects, but many leaves and seeds belonging to other plants. Several specimens, gathered at the same time, were found to have sixteen seeds, belonging to nine different species, adhering to fourteen of their leaves. Seeds of the cabbage and other kinds, applied to the leaves of *Pinguicula*, caused inflection and active secretion from the glands; and there was evidence, not only that the seeds were injured, and in many cases killed, but that the glands had absorbed from them some substances which were no doubt to be used for the nutrition of the plant.

The marauding habits of *Drosera* and other vegetables, so fully described by the author of "*Insectivorous Plants*," suggest another consideration in regard to insects which prey upon each other. The Sundew spreads out its sensitive tentacles in the air; and when some passing fly has alighted on its disk and become entangled in the secretion, they close over his body with mathematical precision and suck out its nutritious juices for their own benefit. The little ant-lion digs a circular pitfall in the live sand, and lies in wait at the bottom

until some incautious intruder has found his way in; and, when his strength has been exhausted in vain struggles to escape, seizes and devours him. Is not the plan thus laid for capturing insect prey an inevitable result of the organization of the animal as well as of the plant; and is it not carried out by a sort of physiological fatality, as imperative in the one case as in the other?

4.—*Lorenzo de' Medici il Magnifico.* Von. ALFRED VON REUMONT. Leipzig. 1874. 2 vols. 8vo. pp. xxiii., 606; xviii., 604.

At the close of the last century a Liverpool attorney published a life of the great Florentine banker, statesman, and poet, known in history as Lorenzo de' Medici, which has since enjoyed a popularity seldom reached even by works of far greater merit. The novelty of the subject, but even more the novelty of the treatment, contributed to make Mr. Roscoe's success as splendid as durable, both at home and abroad, for he may fairly be said to have introduced to the Italians one of their greatest men. In spite of many grave defects, this work will doubtless long remain one of the most entertaining historical monographs in the language. Its distinguishing feature is a judicious blending of the political, social, and literary elements of the period, producing a picture of great brilliance and interest, but which is to good history what Dubufe's *Prodigal Son*, for instance, is to good art. The utterly false conception which Mr. Roscoe conveys of his hero has already been fully exposed by Sismondi, and later by Villari* whose views have been reproduced by Trollope in his history of Florence, and the new methods of political and literary history have long ago outstripped a work, the best part of which is but second-hand and incomplete. The interest of the period itself remained, and continued the popularity of a book for which no better substitute could be found.

This interest has, if possible, increased of late years, as the importance of the Italian Renaissance for literature and art has been more clearly recognized, so that a new work on Lorenzo de' Medici could not have appeared at a more opportune time. Von Reumont's book fills the want long felt of an exhaustive treatise upon the political, social, and literary phases of Italian (and, in a more restricted sense,

* In his *Storia di Girolamo Savonarola e de suoi tempi* (2 vols. Florence: Le Monnier), of which there is an excellent translation by Horner in the *History of Girolamo Savonarola and of his Times*. 2 vols. London: Longman & Green, 1863.

Florentine) life during the latter half of the fifteenth century. The new material at the disposal of the historian of the present day is very large, especially in Italy, where, within a few years, access has been granted to archives never before open to the public, while the rearrangement of municipal and provincial archives has brought to light many valuable and interesting documents.

The book before us is the last of a long series of contributions to Italian art, literature, and history, by one whose training and opportunities have made him one of the best living authorities on these subjects. Alfred von Reumont, born at Aix-la-Chapelle in 1808, after taking his degree in law, entered the diplomatic service of Prussia, and was sent in 1829 to Florence, where, after service at Constantinople, Rome, and London, he became *chargé d'affaires* to Tuscany, and has since then resided in Florence, devoting himself to Italian history and art. It is probable that his previous work has been of a preparatory nature, and that his *Lorenzo de' Medici* is the accomplishment of the wish of his life, the fruition of the author's ripest studies.

The disposition of his material is as follows: The first book contains an account of Florence and the Medici to the death of Cosimo, Pater Patriæ. This period (from the end of the twelfth century to 1464) includes the rise of the Medicean family, the development of Florentine democracy, the rise and progress of art and commerce, the rivalry of the Albizzi and Medici, the defeat and triumph of Cosimo, and the political affairs of Florence to the death of the "Father of his country." The second book embraces the life of Piero de' Medici and the youth of his son Lorenzo, in which period fall the conspiracy of Diotisalvi Neroni and his friends, Lorenzo's education, marriage, and travels, and the brilliant social life of Florence. The third book contains an account of the conspiracy of the Pazzi and the war with Rome and Naples, Lorenzo's famous journey to the latter State, and the peace which was the result of his bold move. The fourth book is in many respects the most interesting portion of the whole work, containing an exhaustive account of the Medici in their relations to literature and art. This section occupies more than three hundred pages, and is, we presume, the most complete treatise extant on this subject.

The fifth book describes the development of the Medicean supremacy, the consequent changes in the Florentine constitution, and the efforts of Lorenzo to maintain the balance of power. The sixth and last book contains the closing years of Lorenzo's life, the condition of public affairs, finances, etc., in 1490, life in Florence, and especially Lorenzo's own mode of living, the opposition and Savonarola, and the

death of Lorenzo. In a supplement the author gives a convenient chronological view of the entire work, genealogical tables of the Medici, Pazzi, Soderini, Visconti, and Sforza families, an account of Lorenzo's death-bed, and a bibliography of works relating to this period. We regret to say that this work suffers from that chronic German complaint, want of index, the lack of which is very insufficiently supplied by the table of contents.

The author has preserved the due proportions of his materials; the literary and social do not outweigh as with Roscoe the pure historical side, while a glance at the table of contents will show they are not neglected. On the contrary, the author has presented a picture of the social and literary life of Florence in the latter half of the fifteenth century unrivalled for completeness and accuracy. He is singularly moderate in his judgments, and like his friend Gino Capponi* prefers to let his readers draw their own inferences from the facts he has carefully gathered and placed before them. If he does not assume a denunciatory tone towards Lorenzo, he at least does not conceal or garble the facts in regard to him, which are, after all, sufficiently condemnatory in themselves.

It seems at first sight strange that a city (we should say State, but Florence was the State for so many years that it is hard to separate them), the one political fear of which was that one of its own citizens should become its tyrant, should fall under the yoke of such a family as the Medici, who first plundered it, and then destroyed forever its independence. The hold of the Medici upon the State was but temporarily relaxed from the time that Cosimo returned from exile in 1434. The State drove them out several times, but they always returned to fix themselves more firmly on its vitals, until the body corporate was too exhausted to do aught but suffer. The early history of the family is buried in an obscurity which Von Reumont cannot clear up. They did not belong to the historical families of Florence, and the first trace of them appears near the end of the twelfth century. A hundred years later, one of them, Ardingo, was one of the Priors, and in 1296 *gonfaloniere*, which office was filled three years later by his brother Guccio. The sarcophagus which once held the latter's remains bears the well-known coat-of-arms of the family and that of the guild of the *calimala* (woollen cloth), to which he belonged. The origin of the family as well as of its armorial bearings is absolutely unknown. By some the origin of the balls (*palle*, hence the name *palleschi* as applied to the adherents of the Medici) has been

* See "North American" for October, 1875.

carried as far back as Perseus and the apples of Hesperides, others refer them to the time of Charlemagne, and claim that they represent the hilly region of Mugello. Others still think they indicate descent from some knight who assumed as his arms the dents left in his shield during some combat with a giant. Those more moderate in their views attribute the balls to the supposed medical origin of the family, and it has been hinted that they were in some way connected with the pawnbrokers' sign. All these stories, it is needless to say, have no foundation.

The family belonged to the *popolani*, and not until the latter half of the fourteenth century did any member of it assume a prominent position in Florentine politics. Then Averardo (surnamed Bicci) and his cousin Salvestro made the name well known. The latter, who was several times *gonfaloniere*, is best known from his connection with the celebrated *Ciompi* riot in 1378. Averardo was the head of the afterwards famous Medici family, and laid the foundation of the wealth to which so much of its success was due. His grandson was Cosimo, Pater Patriæ, Lorenzo's grandfather. Von Reumont draws a darker picture of him than is usually given. He was of a retiring disposition, simple in his tastes and carefully concealing the part he took in the affairs of the State. He inherited a large fortune, and increased it greatly by his own efforts, beginning that unfortunate system of speculation which led to such disastrous results in Lorenzo's day. How great Cosimo's influence was, may be seen by the fact that he compelled Venice and Naples to make peace with Florence by withdrawing his credit from them. His conscience was not, however, clear as to the means by which part at least of his fortune had been acquired, and the large sums he spent upon the building of churches and other religious edifices give the measure of his uneasiness about the future. When he came to die, two things troubled him: first, that he had not done as much good as he had desired, and been able to do; and second, that he left his son Piero in feeble health.

This sickly son, surnamed the Gouty, occupies an unfortunate position between his celebrated father and his still more famous son. He was, however, a person of much ability, and managed to transmit unimpaired to his son the power he had inherited from his father. He died in 1469, fifty-three years old, and was, so to speak, succeeded by his son Lorenzo, afterwards termed *il Magnifico*, then twenty-one years old.

One of the most difficult points in the history of the Medici (before the *principato*) is to fix with certainty the nature and extent of the political power they enjoyed in the commonwealth. They were

regarded as princes (after the conspiracy of the Pazzi the State gave Lorenzo a body-guard), but held no public position, and yet were able to direct the commonwealth as their own business, appropriate its revenues, wage war, make alliances; in short, for all practical purposes they were as much "tyrants" as the rulers of Milan and Verona. Von Reumont gives a tolerably clear idea of the tenure of the Medici power in the first volume of his work, page 292, *et seq.*, and some light is also thrown on the subject from Lorenzo's private journal, in which, following the example of his ancestors, he has jotted down the most memorable events of his life. He says that the second day after his father's death the principal men of the city and State came to his house to condole with him on his father's death, and to ask him to assume the care of the city and State as his father and grandfather had done; he adds: "which thing, as being incompatible with my age, and of great weight and danger, I accepted unwillingly, and only for the preservation of our friends and property, because it is difficult to live in Florence without having authority in the State (*senza lo stato*)."

Francesco Guicciardini, in one of his works, which has but lately seen the light (*Del Reggimento di Firenze*), says: "The government of the Medici was a party government, usurped by the party, kept by tyranny neither violent nor cruel, a few cases excepted, where it was necessary to be so; a government founded on the acquiescence of the weak, the union of the interests of the more powerful with its own interest, and on the oppression of all those who assumed an air of independence." The matter of Lorenzo's succession, then, was arranged by the "party," which, the evening after Piero's burial, held a meeting to which all the principal citizens who were in favor of the existing government were invited. Some six hundred of the flower of the city met in the cloister of St. Antonio, near the Porta Faenza, and Tommaso Soderini made a speech and proposed that Lorenzo should be continued in his father's position. Some others remarked, "that it was necessary to have a lord and head, who alone would have to manage the concerns of the State of this noble signory." A sad change indeed in Florentine public opinion when such words could be openly spoken, much less listened to and followed. The manner in which the party kept the reins in its own hands was as follows. The ordinance of September 6, 1476, had placed the election of the highest magistrates for the next ten years in the hands of electors who were named by the Council of the Hundred. The heads of the party were accustomed on extraordinary occasions to select the names of these electors and hand them to the aforesaid council, which at once

accepted and appointed them, as the council in turn was composed, if not entirely of members of the party, at least of those who did not oppose it. It happened, however, sometimes, that not all the candidates proposed were appointed, and it is easy to see that the time might come when the election might be in the hands of electors unfavorable to the Medici cause. In order to avoid this danger various plans were introduced. In the summer of 1470 the government, then entirely devoted to the Medici, introduced a resolution in the Council of the Hundred, providing for the establishment of an electoral college, consisting of all the electors then remaining from 1434, forty in number, with five new ones to be named, from which number five were to be drawn yearly who were to appoint the *signori* and the *gonfaloniere* from the list of citizens capable of holding office. This outrageous attempt to set up forty-five tyrants over the city failed. Six months later, however, a similar plan succeeded, namely, the *signori* for July and August, together with the electors who officiated that year, named those for the next, the Council of the Hundred confirming them by a bare majority, where previously a two-thirds vote had been necessary. It is needless to say that at the next election in July only the names of reliable persons were put on the tickets, and the government came more and more into the hands of the few. This was all done by the party itself while Lorenzo was still young, and before his great personal influence was felt, and before the attempts on his life increased his popularity and strengthened his hold on the State. How strong this hold was, his later life shows, when he was the real head of the State, when popes, kings, and princes addressed him, and ambassadors corresponded with him.

The period of Lorenzo's greatness has been the subject of many volumes, but the reader who has heretofore depended on Roscoe will find in the work before us abundance of new material which will probably modify most seriously the views advanced by him, while at the same time it will mitigate the extreme opinions of Villari and Trollope.

Lorenzo's last years were rendered unhappy by bodily infirmities and the anxieties of his position, which was necessarily always a critical one. There must have been many things on his conscience which he could not relieve, like Cosimo, by lavish gifts to the church. His life was full enough of dramatic incidents, but its final scene was in some respects the most dramatic of all. After trying various mineral baths in vain, he was carried in March of 1492 to his favorite villa of Careggi. Here he grew rapidly worse, and set his house

in order for his approaching death. A priest of San Lorenzo administered the *viaticum*, and then, strangest of the many strange events in the history of the Magnificent, Savonarola entered his chamber, having been summoned at Lorenzo's express desire. Of what followed there are two very different versions, one by Burlamacchi, the friend and biographer of the friar, the other by Poliziano. The latter account is the one received by Von Reumont, and runs as follows: "Scarcely had Pico left Careggi when Fra Girolamo of Ferrara, a man distinguished for his learning and holy life, and an eminent preacher of the gospel, entered the room and exhorted the sick man to hold fast to the faith. Lorenzo answered that his faith was unshaken. The friar then urged him to lead in the future a better life, and he said he would with all his might. Finally, Savonarola exhorted him, if necessary, to meet death calmly. The dying man said that nothing would be sweeter if it were the will of God. The friar was on the point of departing, when Lorenzo said: 'Give me a blessing, father, before you leave me.' And with bowed head and countenance, and with all the appearance of religious earnestness, he responded correctly and consciously to the friar's words and prayers, undisturbed by the now open sorrow of his family."

Burlamacchi's account, as given by Villari (Horner's translation, Vol. I., p. 141) is as follows: "Pico had no sooner retired than Savonarola entered, and approached respectfully the bed of the dying Lorenzo, who said that there were three sins he wished to confess to him, and for which he asked absolution: the sacking of Volterra; the money taken from the *Monte delle Fanciulle*, which had caused so many deaths; and the blood shed after the conspiracy of the Pazzi. While saying this, he again became agitated, and Savonarola tried to calm him, by frequently repeating, 'God is good, God is merciful.' Lorenzo had scarcely left off speaking, when Savonarola added, 'Three things are required of you.' 'And what are they, father?' replied Lorenzo. Savonarola's countenance became grave, and, raising the fingers of his right hand, he thus began: "First, it is necessary that you should have a full and lively faith in the mercy of God.' 'That I have most fully.' 'Secondly, it is necessary to restore that which you unjustly take away, or enjoin your sons to restore it for you.' This requirement appeared to cause him surprise and grief; however, with an effort, he gave his consent, by a nod of his head. Savonarola then rose up, and while the dying prince shrank with terror in his bed, the confessor seemed to rise above himself when saying, 'Lastly, you must restore liberty to the people of Florence.' His countenance was solemn, and his voice

almost terrible; his eyes, as if to read the answer, remained fixed intensely on those of Lorenzo; who, collecting all the strength that nature had left him, turned his back on him scornfully, without uttering a word. And thus Savonarola left him without giving him absolution, and the Magnificent, lacerated by remorse, soon after breathed his last, on the 8th of April, 1492."

Von Reumont, in an appendix, shows that there is good reason to doubt the latter account, and his opinion has been followed by Gino Capponi in his History of Florence.

The most interesting portion of Von Reumont's work for the general reader is, as we have said, the fourth book, — the Medici in relation to Literature and Art, — which treats with the greatest fulness the literary side of the Renaissance. The mass of details accumulated here, as elsewhere, by the author, is enormous; and even if it sometimes obstructs the progress of the narration, it will prove most welcome to students for whom these very details are so important, and which are often so difficult to obtain. A notable feature in this division is that the author does not lose sight of the popular literature of Italy, and the change wrought in it by the Renaissance. This is especially valuable since this period has been thoroughly treated by Burckhardt, Voigt, and others, with almost exclusive reference to classical studies. Von Reumont gives a crowd of details concerning the book-trade of the fourteenth century, prices of manuscripts, manufacture of paper, and the fourth section gives an account of the libraries founded by Cosimo de Medici (San Giorgio Maggiore in Venice, St. Mark's in Florence, and that of the Abbey of Fiesole), Niccolai's manuscripts, fifteenth-century copyists, etc. The fifth section contains a valuable sketch of Italian literature and popular religious poetry. In intimate connection with this section stands the next on Lorenzo de' Medici as poet, for the most salient quality of Lorenzo's poetry is its popularity, and the three popular directions of the literature of his day are all represented in his works, namely, the *laude*, or spiritual songs; *sacre rappresentazioni*, or religious plays; and *canti carnascialeschi*, or carnival songs. Very interesting, too, is the account of the Platonic school, which occupies so large a space in the history of this period, and the very complete sketch of Poliziano, Lorenzo's lifelong friend.

Our space forbids anything but a mention of the section devoted to the fine arts. Von Reumont shows that although the period was not the most brilliant, still it hardly deserves Villari's severe denunciations. In short, everything proves that the age of Lorenzo was not only one of transition, but one the elements of which were held

together by the strong will of Lorenzo himself; and at his death the most sudden dissolution overwhelmed them, and in a few years it was hard to realize that this brilliant age had ever existed. The sudden disruption of the balance of power, to establish which he had labored all his life, the exile of his family, the invasion of Italy and the beginning of the countless woes of succeeding ages, the religious reaction and the tyranny of Savonarola and his party, — all these were events as sudden as unforeseen, except by a few, among them Lorenzo himself, and for some of which he was directly responsible.

Von Reumont's estimate of Lorenzo is, it seems to us, marked by great fairness. According to him Lorenzo possessed the quickest susceptibility and the most rapid comprehension, together with the earnestness and care of a student, a fresh and happy taste for the fine arts, with the capability of direct application to the ordinary affairs of life. He thus united the qualities of the poet and statesman, the connoisseur and unwearied patron, the citizen and prince, fancy and clear judgment, great plans and patient calculation. He was tireless in the manifold duties which devolved on him in the guidance of a peculiarly constituted State; enduring, embracing the whole of his duties with a sure and rapid glance, and observing the smallest detail; in his riper years prudent and thoughtful, keeping his eye fixed on his aim, without blind self-confidence and boasting, although with a lively feeling of his own position as well as that of the State of which he was the representative. He passed with great ease from practical politics to speculation, science, and poetry, even here comprehensive, many-sided, creative as very few were, with the deepest interest in and most delicate sense of beauty, and with profound insight into the being and problems of art.

In his domestic relations he was friendly, social, cheerful even in the midst of bodily pain, not free from errors that already at that time, and more at a later date, relaxed the marriage relations, yet with a real attachment for his family, for the excellent mother many of whose good qualities he shared, for the wife whom he had not chosen,* for his children, to whom he was a kind but not a weak father and a judicious adviser. A warm, true, attentive friend, attracting and retaining the most different dispositions, always ready to help in word and deed, in the midst of a thousand business cares interfering and interesting himself for high and low. He was not free from the weaknesses and vices of his time; they injured his

* He says in his journal, or *Ricordi*, mentioned above: "I, Lorenzo, took Donna Clarice, daughter of Signore Iacopo Orsino, or rather she was given to me." (*Ovvero mi fu data.*)

policy, although it stands high above that of most princes and statesmen of his day, Italian as well as foreign, in honesty and consistency. During the last ten years of his life, he clung immovably to the necessity of preserving peace and concord with that national consciousness which corresponded to the idea entertained at that day, and which it would be unjust to blame because it differed from our own. His internal policy has been most severely blamed for the changes made in the constitution for the purpose of increasing his personal authority, and the corruption of which he was guilty in order to obtain unbounded control over the finances of the State.

In conclusion, Von Reumont says that the greatest evil perhaps in Lorenzo's government was in the increasing incongruity between the outer form and the real power, in the removal of authority from its legal centre, whereby both justice and moderation were put in peril. The personal element gave the decision in the policy of the State as well as in its finances and justice. If Lorenzo's government on the whole was free from the excesses which marked that of Cosimo, it was due to the change in the times as well as to the disposition of Lorenzo. "He wished to rule, but he was no tyrant. In the first place, he was too sagacious and knew too well the character and traditions of the people; on the other hand, his was a nature too rich and magnanimous, too much in need of friendship, too fond of enjoyment. In short, he was too much a Florentine citizen."

Such, in brief, is the author's estimate of the most remarkable man of a remarkable period, a period the influence of which is still felt in literature and art; and which will never cease to attract and puzzle the student of political and social history.

5.—*The Methods of Ethics.* By HENRY SIDGWICK, M. A., Lecturer and late Fellow of Trinity College, Cambridge. London. Macmillan & Co. 1874. 8vo. pp. xxiii. and 473.

MR. SIDGWICK has given, in his table of contents, so complete an account of his aim and mode of procedure, that nothing more is needed here than a brief outline. What he undertakes is a critical review of the various methods by which the common-sense of mankind (or perhaps we ought rather to say, of England and America) justifies to itself the fundamental assumption of Ethics; and to exhibit impartially the conclusions to which they logically lead, without any final judgment of their conflicting claims.

The fundamental assumption is, that there is something under any

given circumstances which it is right or reasonable to do, and that this may be known. That it may be known; for if we say that it cannot be known but only felt, then of course ethical reasoning stops, and right and wrong cease to have any meaning as distinct from what is agreeable to the momentary impulse. If, on the other hand, there is any universal end of conduct, any Supreme Good, that can be known, it must be, however difficult, yet possible to state it, not merely as something to which conduct conforms, but as something to which it *ought* to conform; in other words, it must be not only consistent but rational. The moral judgments of mankind are commonly attended with (and frequently warped by) emotion; but if they have any claim to the title of judgments it must be practicable to obtain by reflection, from the fluid mass of opinion, a deposit of clear and precise principles commanding universal acceptance. Nor do the discrepancies of moral codes disprove the possibility of ethical science. They only show that on this as on other subjects the human mind is prone to error, and not that truth is necessarily unattainable. But in order to erect the moral opinions of mankind into scientific axioms, it is necessary to show (1) that they can be stated in clear and precise terms; (2) that they are really self-evident; (3) that they do not conflict with any other truth; (4) that they are supported by a complete "consensus of experts."

The methods of Ethics to which these tests are to be applied are reducible to three: (1) Egoism, or the systematic pursuit by each individual of his own maximum happiness as the supreme good; (2) Intuitionism, or the appeal to a sense of what is in itself right or reasonable to be done, without regard to consequences; (3) Utilitarianism, or the adoption of the greatest happiness of the greatest number, as the end of conduct.

1. Assuming the rational end of life, for each individual, to be his own maximum happiness, common-sense does not, on reflection, warrant the belief that happiness can in general be best secured either by giving free play to our impulses, or by regulating them in accordance with a careful comparison of experienced pleasures. We continually discover illusion and error in the attempt to form any standard of pleasures, either by appropriating the experience of others, or by inferring future pleasures from past. And this seems inevitable; for although every sentient individual must be the final judge of the pleasantness or painfulness of his own feelings while he feels them, yet for that very reason he cannot know the feelings of another person or of another moment. His present experience does not enable him to predict anything about a feeling which he

does not feel. Nor even if we could succeed in arranging pleasures and pains on a scale of preferableness, would it follow that happiness could infallibly be secured by the direct pursuit of it. Often it seems to be more conducive to happiness to follow the leadings of natural instinct; and the intrusion of prudential considerations to be suicidal. Yet, on the other hand, it would be paradoxical to put forward, as the *dernier mot* of ethical philosophy, a negation of the natural supremacy of Reason over impulse. The method of Egoism, then, does not seem of itself to lead to any secure conclusions.

2. Intuitionism. The belief that what seems right to us would be right for all persons under similar circumstances is certainly a condition of right conduct, but it does not follow that what we think right is so. Conscientious persons are continually disagreeing as to what ought to be done, and it seems moreover at least doubtful whether in a case where another is about to do what he thinks right, while we believe it to be wrong, we ought to attempt to urge him to realize objective rightness against his conviction. No doubt we have distinct moral impulses, claiming authority over all others, and prescribing or forbidding kinds of conduct as to which there is a rough general agreement, at least among educated persons of the same age and country. But the objects of these impulses do not admit of being scientifically determined by any reflective analysis of common-sense. The notions of Justice, Benevolence, Veracity, etc., are not emptied of significance for us because we find it impossible to define them with precision, but the attempt to elevate the Morality of Common Sense into a system of scientific Ethics brings its inevitable imperfections into prominence, without helping us to remove them.

3. Utilitarianism avoids the hopeless attempt to define the *summum bonum* as an objective relation intuitively perceived, between conscious minds and each other, or the universe generally, and substitutes for it the consideration of Happiness or desirable feeling as the ultimately and intrinsically Good, other things being good as means to this end. If we make Perfection the end, apart from the happiness accompanying and resulting from it, we cannot say that it is ultimately and intrinsically desirable, because, from the supposition, it is not felt to be desirable, and there is no other way of knowing what is desirable but by feeling it. We do indeed find in Common Sense an aversion to admit Happiness to be the sole ultimate end and standard of right conduct. This aversion, however, is due to the mistake of supposing Happiness to mean *Our Happiness* as opposed to, or at least distinct from, *Universal Happiness*. Reason gives me no warrant for considering *my* happiness intrinsically more desirable

than the happiness of any other person, still less, than that of all other persons. I am to count for one, and for no more than one, in the sum of mankind, or, perhaps, of sentient beings. Utilitarianism, then, accepts the Intuitionist position, that there is something under any given circumstances which we are bound as rational beings to do, and that we can know intuitively what it is. But in place of the precept to "do our duty," which leaves us without any means whereby to determine what our duty is, it substitutes the criterion of happiness, that is, the tendency to increase the pleasures or diminish the pains of mankind at large, or perhaps of sentient creatures generally, as the test of conduct. This is indeed the test to which mankind do and must appeal for decision in the case of the divergence of any respectable section of the community from the received moral code. The first principle of Utilitarianism, that the fulfilment of my desires is not to be regarded by me as intrinsically more desirable than the equal satisfaction of any one else, is the most certain and comprehensive of intuitions, and most of the others seem to be most thoroughly understood when considered as partial and imperfect applications of it. This does not mean that the perception of rightness has always been consciously derived from perceptions of Utility, but only that the morality of Common Sense is instinctively utilitarian, and that we have in it in fact a body of utilitarian doctrine which only needs to be rectified and carried out by more strict reference to its implicit principle.

But it is one thing to admit the principle of Utility, and another thing to feel a decisive impulse to act in accordance with it. As a fact this impulse is not always sufficiently felt, and it is because of this fact that Utilitarians dwell on what they call the Sanctions of their rules; that is, the pleasures to be gained or pains to be avoided by the individual conforming to them; and that Society endeavors by the contrivance of rewards and punishments to replace or to reinforce the spontaneous impulse. But is it possible to demonstrate on empirical grounds the inseparable connection between Utilitarian Duty and the greatest happiness of the individual? It seems not, for Duty may call upon him to sacrifice his life, with all demonstrable possibilities of happiness for himself and for those whose happiness depends on his, to the general good. No doubt social virtue is in general conducive to happiness, but there is no empirical proof that they universally coincide.

If, however, we can conceive the Utilitarian Code as the Law of God, and feel convinced that he has announced his intention of rewarding those who obey his commands, and punishing the disobe-

dient, — then indeed we have an inducement which is of course adequate. This hypothesis cannot be verified by experience, indeed it contradicts experience, for it declares that the moral order which we see imperfectly realized in this actual world is yet actually perfect. Yet without some such assumption we feel that a universe so constituted that Good for the Individual is not ultimately identified with Universal Good, is fundamentally irrational. This, to be sure, is only saying that unless we can obtain such a premise, Ethical Science is a failure, and the operations of Practical Reason illusory.

With this suggestion, that Ethical Science can be constructed only on a basis borrowed from Theology, Mr. Sidgwick leaves the matter, without deciding whether upon such a basis it can be constructed. This decision would require, he says, a complete discussion of the ultimate basis of philosophic certainty; the ground upon which we assent to propositions as true. Without entering upon this discussion, however, it seems clear that if, as Mr. Sidgwick seems to assume, our knowledge of Good is necessarily empirical, if the only proof that anything is desirable is that it is desired, "the existence of these however elevated desires does not furnish a proof of the existence of their object; indeed, can scarcely afford a strong presumption in favor of this conclusion, considering the large proportion of human desires that experience shows to be destined to disappointment." Indeed, we may go farther, and say that it would be a great misfortune if they were not disappointed, for Happiness is a collective name for an endless variety of objects, often incompatible with each other, which different people suppose to be desirable. It is impossible to imagine any definite state of facts, any mode of life, occupation, complex of circumstances, that would be acknowledged by everybody to be the best possible; and even if such an agreement were by chance hit upon, it could not endure, and ought not to endure, for it would mean the stagnation of thought and the cessation of all moral progress.

It is vain then to expect that mankind will ever attain to definitive unalterable opinions about what is desirable, and it would not be on the whole a blessing if they were persuaded that a divine sanction is attached to those opinions which they have attained.

But admitting the impossibility of raising our stock notions about conduct to the height of scientific axioms, does it follow that it is impossible for each one of us to know for certain in any given case what it is right or reasonable for him to do? Is there not a confusion underlying the whole of Mr. Sidgwick's argument, between our

opinions as to what is on the whole desirable, and the intimations of Conscience as to what *must* be done in a case peculiar to ourselves? Those general considerations are of immense importance and well worth all the pains we can give to them, for on them the working of the social machinery depends. But they necessarily start from abstractions, from what is true in the average case, as to people in general, or in the long run, and so cannot arrive at certainty as to a particular case, but only at probability. Now it is in one sense true that we act always upon probabilities, since we are not infallible, — but it does not follow that our duty is only probable to us and not certain. For the assent of Conscience is not given to an empirical fact, as to which we may be mistaken, as to whose bearings at any rate we *must* be mistaken, that is, imperfectly informed — but to a logical necessity, namely, what we ought to do, *taking our facts for granted*, — and this need not be doubtful or liable to change. Conscience does not command us to be infallible, but only to act for the best; this is always in our power, and so acting we need never repent what we have done. There is, then, nothing irrational or exorbitant in its categorical imperative, — nothing that requires a miracle or a “consensus of experts” for its support. Is the command too vague? We shall not make it more definite by putting it into a general formula which is just as applicable to one person or one state of circumstances as to another. The objection to making Utility the criterion in Morals is that in the effort to be comprehensive it ignores its fact, and explains the absolute, uncompromising tone of the oracle within the breast by assuring us that it is only one voice out of many, none of them quite agreeing, and all to be equally regarded. To explain the sense of Duty as the resultant of all the impulses of the average man or woman in their ordinary moments, is like explaining Niagara by analysis of the water at its foot. It is the *fall* that makes Niagara, not the chemical constituents of the drops, or their behavior in the pool below. It is the height above the level of ordinary life and its experiences that gives momentum to the act of Conscience, and the attempt to extract the notion of Obligation from the notion of Utility can issue only in mystifications like the setting up of Happiness in general, which is the happiness of nobody in particular, as the Supreme Good, and then trying to supply to this empty abstraction a content which may give it attraction.

This summary discussion of results necessarily leaves out of sight what is perhaps most admirable in Mr. Sidgwick's book, the unwearyed carefulness of expression, still more the urbanity and candor, the

Aristotelian impartiality, "the pure air of scientific curiosity," — most refreshing after the heat and dogmatism of much that calls itself "scientific" philosophizing. To get philosophical problems discussed in this tone is the first condition of that hearty co-operation of men of different schools which Philosophy just now stands much in need of.

6. — *The Map of Europe by Treaty, showing the various Political and Territorial changes since the General Peace of 1814.* By EDWARD HERTSLET, C. B., Librarian and Keeper of the Papers, Foreign Office. London: Butterworth, 7 Fleet Street. 1875.

NOTHING is so thoroughly satisfactory to any one who ever uses books, nothing gives so much real and enduring comfort as a good collection of works of reference. Works of reference in their highest form are not the encyclopædias, those vast collections of which the first volume is antiquated when the last is published, but works of enduring nature, which serve the student for a lifetime. There are but comparatively few of these monuments of modern research which unite the qualities of excellence, accuracy, and endurance. "L'Art de vérifier les dates" is as valuable now as when it was published nearly a century ago; Du Cange will probably never be out of date; the "Biographie Universelle" is a source of never-failing satisfaction; and if to books such as these be added the more compendious and cheaper works which maintain the connection with the current year, the desired and precious collection is complete.

Mr. Hertslet's book is a valuable addition to our libraries of reference. It not only presents with accuracy and in excellent form the important material for one branch of history, but it covers a period of which there is practically no history for the present generation, and is therefore of double value. Mr. Hertslet's opportunities have been the best possible for the work he has undertaken, and so far as a cursory examination can be relied on, he has performed his task with care and thoroughness. All the European treaties from 1814 to 1875, inclusive, are given, and each is preceded by a head-note, to borrow the legal term, explaining the substance of the document. The work is still further enriched by the insertion of all the Declarations of War, Guaranties of Independence and Neutrality, Decrees of Annexation, and the corresponding protests. All treaties and papers referred to, of an earlier date than 1814, are also given, so that the documentary history of every treaty is complete. The vol-

umes amount therefore to a complete diplomatic dictionary for the period. Maps are added to all such treaties as seem to require them, and there are two general maps of Europe, in 1814 and 1875. Mr. Hertslet has most sensibly reduced his maps to a scale corresponding to the size of the book, and the misery induced by maps and plans which have to be unfolded, refolded, and more or less torn in the process is thereby avoided. An exception to this rule of reduction might, however, have been made with advantage in the case of the two general maps. As they now stand, they are too small and too crowded with names to be of much practical use. It is pleasant to find an author who has a realizing sense of the value of a good index and elaborate cross-references. Many a good book has been condemned for the lack of any index, or for what is still worse, a bad one. In arrangement, and regard for the convenience of the student, there is nothing wanting, with one very remarkable exception. Mr. Hertslet says in his preface that the book is especially compiled for the use of the English statesman and student. Accepting his own definition of his object, he has made a great mistake in omitting all the treaties, etc., with the United States. The only American treaty given is the treaty of Ghent, and this is not accompanied by the documents and subsidiary treaties necessary to its comprehension. This defect injures the book for Americans, and it is not easy to see why it does not injure it in almost an equal degree for Englishmen. Treaties with the United States assuredly have been one field for English diplomacy. It is not conceivable that lack of importance or of interest can have been the ground of exclusion. It is not necessary to go further back than the Treaty of Washington to find points of international difference in which Englishmen, at the time at least, professed a certain interest. Searching for reasons is idle; Mr. Hertslet offers none, and the book suffers from the neglect of one important branch. It is on this score open to the charge of incompleteness, the most grievous sin in a book of reference. This is, however, the only fault apparent at first sight, and so much has been done, and well done, that it would be captious to insist too greatly on one error.

We will not damn the book by saying, in the language of book-sellers, that it should be in every gentleman's library, but we have no hesitation in saying that it is a book of great value, not only to every student but to all educated men.

- 7.—1. *Nero: An Historical Play.* By W. W. STORY. William Blackwood & Sons: Edinburgh and London. Scribner, Welford, and Armstrong: New York. 1875.
2. *Rose and Roof-Tree: Poems.* By GEORGE PARSONS LATHROP. Boston: James R. Osgood & Company. 1875.
3. *The New Day: a Poem in Songs and Sonnets.* By RICHARD WATSON GILDER. New York: Scribner, Armstrong, & Co. 1876.
4. *Cartoons.* By MARGARET J. PRESTON. Boston: Roberts Brothers. 1875.
5. *The Ship in the Desert.* By JOAQUIN MILLER. Boston: Roberts Brothers. 1875.
6. *Guido and Lita: a Tale of the Riviera.* By THE RIGHT HONORABLE, THE MARQUIS OF LORNE. New York: Macmillan & Co. 1875.

THE first misfortune for a work of art or literature is, that its subject should be a cause of regret. It is like stumbling on the threshold. Mr. Story is not the first who has found matter for a tragedy in the reign of Nero, but he is the first who has attempted to dramatize the whole. There are few of his admirers who will not lament the choice of such a theme; it lacks all that can move us, except to horror and disgust; and there is a coarseness almost inseparable from it (which Mr. Story has not eschewed in dealing with it), alien to the genius of our times. To say the least it was a bold attempt, and that it is not a total failure is the best proof of the author's talent. The final test of the specific merit of any dramatic work is its fitness for representation; judged by this standard, *Nero* is more successful than any composition of the same class which has appeared within many years. Whether Swinburne's, Browning's, or Tennyson's tragedies be performed or not (and we believe the experiment has been tried in the case of the two last mentioned), they are essentially unsuitable for the stage, whereas, with some adaptation, *Nero* would make a most effective play. As it stands, it needs compression; its length weakens it. There are many scenes which serve no purpose except that of following the historic narrative with exactness; such are Scenes V. and VI., Act III., and the two scenes in the camp in Spain, Act V.; a phrase or two in another place would supply the links without hampering the action. Those also in which the death of Seneca and Poppæa is protracted are hurtful both to the general and particular effect. The episode of Sporus is unfit to be performed, and the play

would lose nothing by leaving it out. In Scene I., Act III., Agrippina, finding that her authority over her son is gone, strives to maintain her influence by her charm as a mere woman, — a terrible situation, for which, as in everything else, Mr. Story has the warrant of history; depicted with power, it is the most telling moment of the drama, and might be given in a French or Italian theatre, but not before an English-speaking audience. The play has vigor and marrow enough, however, to spare it. The same excerpction might be practised with good results upon many of the speeches, which are too lengthy; striking dramatic points are lost by multiplying words. Important as these omissions may seem, they would not really touch the core of the play. Nero, Agrippina, and Poppæa have individuality, and set each other in strong relief. Agrippina is an imposing figure, and except that now and then she rails overmuch, is sustained with consistency. Nero's childish peevishness is unpleasantly prominent in the beginning; it may not be out of keeping for him to say, —

“He's a bore,

And for his verses, they're not worth a straw.”

But such expressions, and similar ones, are below the dignity of the verse, and taint it occasionally with modern vulgarity. But Nero is a remarkable character; history has given us the elements and outlines, which here are completed and combined; the momentary strength which flashes forth, as in his defiance of his mother at the close of Act II., the childish facility to be pleased, irritated, cowed, are portrayed with skill. These are especially brought out in the early scenes with Poppæa, but the climax is in Act V., Scene VI., when, with the footsteps of fate already sounding in his ears, he gives way by turns to abject cowardice, insensate rage, superstition, and the puerile vanity which is the keynote of his nature. There is a sharpness, a shrill, acrid quality in his passion which sets the nerves on edge without moving the sympathies, exactly as the anguish of vice should do. Besides these principal personages, some of the minor ones, Burrhus, for instance, would be impressive in good hands.

The literary merits of a play are so involved with the dramatic, that the finest passages generally lose their effect unless the whole scene can be given. Mr. Story has a defect which he shares with the eminent English poets of the present day; like Molière's *M. Jourdain*, they make prose without knowing it. Sometimes he is worse than prosaic, he is trite; one may expect occasional platitudes from Seneca, but not from Agrippina. But this is far from the prevailing

tone of his dialogue. We give a few striking and poetic sentences which suffer least by being rent from their place in the play :—

“ All passion, when repressed,
Gives force to action, — wings the arrow home,
With the strained tension of its utmost bend.”

“ My feet are wearied here,
Treading along these perilous defiles
That beetle over death, blown by wild gusts
That tear and strain me.”

“ I love you so
That all goes wild within me, — all my thoughts
Blow here and there like loose leaves in a gale.”

“ Wild with senseless fears,
And starting at vain shadows, like a horse.”

“ O what a day it was
When, with a shout that seemed to rend the air,
The army hailed you Cæsar! My poor heart
Shook like the standards straining in the breeze,
With that great cheer of triumph. All my toil
Then seemed as nothing. I had won the prize.

“ One such hour as that
Outweighs long years of common life, — repays
The struggle and the toil that gendered it;
And all the past pain lying dark behind
Shows like night's background for the lightning flash
Of one keen, vivid joy to blaze against.”

The excellence of much of this tragedy, and the nature of its defects, lead one to suppose that the latter arise chiefly from carelessness, and this suspicion is borne out by the absence of *Narcissus* and *Pallas* from the list of *dramatis personæ*, although they appear in the play. Nor should it be forgotten that literature is only Mr. Story's recreation, though it might well have been his vocation.

If a poet is not original, the next best thing is to be like one of the great masters of song. Mr. Lathrop has the gift of recalling Tennyson, not by imitation, but by a real resemblance, springing, no doubt, from a kinship of talent. *Melancholy*, *June Longings*, the *Silent Tide*, all have the family likeness, but unluckily it is to the Laureate's weaker features. The rural idyls are not the best or most beautiful of Tennyson's poems, and these are what the *Silent Tide* reminds one

of. There are good lines, faithful descriptions, passages which are almost fine; but the highest praise which can be given to the whole is that it feebly resembles Enoch Arden or Dora. A Rune of the Rain wakes the same reminiscence, not to particular poems, however, but to the spirit, the musical voice, the delicate, true touch of Tennyson in those first two volumes which once made him the idol of a young generation. This is a most lovely and delightful ode, as soothing and refreshing as its theme; not Wordsworth himself was more tenderly intimate with Nature in her weeping moods, nor has found fitter words for them.

The April Aria, and Sun-Shower, have some of the same charm, though marred by a few imperfections and affectations. Let it be said in passing, that Mr. Lathrop is not generally affected; whenever he seems so, it strikes us as the consequence of an unsuccessful struggle with his verse, not of a conscious effort, such as grimaces on the pages of almost every rhymester of the present day. The love-poems are full of youth and feeling; Lily Pond has one stanza, as delicate as a picture of Kensett's:—

“One ripple streaks the little lake,
Sharp purple blue; the birches, thin
And silvery, crowd the edge, yet break
To let a straying sunbeam in.”

They are all pretty, and worthy to be slipped into the palm of a fair hand, but hardly to be published. We should not mention a poem called Jessamine, but for our wish to remind a number of writers that a burden belongs to the ballad alone, and that a tale in verse is not necessarily a ballad. Here we have a very commonplace story, with its tame quatrains, dragging after them a fifth line rhyming with none other:—

“And the moon hangs low in the elm.”

Helen at the Loom is a study, and more finished in execution than anything else in the book; it contains very fine lines, but there is an inherent defect, unhappily common to too many of the other poems,—lack of thought. The Bobolink, Song-Sparrow, Before the Snow, and even some of those already named for their sweetness and grace, have nothing in them. The absence of the vital principle is sadly felt in the two most serious attempts of the collection, Burial Song for Summer, and Arise, American; Mr. Lathrop has not underestimated the dignity of his subject, but his verse, instead of rising into loftier spheres, wanders about in emptiness, with high-sounding words which produce only a hollow reverberation. There is the same shortcoming in Grief's Hero, but here the inspiration at least is from

within, and intimates a capacity for a more elevated strain than could be guessed even from the beautiful *Rune of the Rain*; Contentment, also, which reads at first like an anagram of some of Wordsworth's little moral poems, contains a grain of this higher quality. The earnest tone which rings through *Fairhaven Bay* and the *Silent Tide* inclines us to hope that hereafter Mr. Lathrop, in maturer verse, may find ideas deserving his charming gift of words.

Mr. Gilder tells us that the first of his sonnets is "After the Italian." The fact is, that many of them are merely clever imitations of the poems translated by Mr. Rossetti, first published under the title of "The Early Italian Poets," now in a revised edition called "Dante and his Circle." We do not know whether Mr. Gilder be acquainted with these compositions in the original or no, but strongly suspect not; we think the volume before us bears unmistakable trace of the influence of Mr. Rossetti himself, and his fellow-poets and painters. If the *Riddle of Lovers*, No. I., *Love's Cruelty*, and half a dozen more of the sonnets recall Mr. Rossetti's renderings from the Italian, *Love in Wonder*, the first part of *The Sower*, and portions of other poems suggest no less strikingly the wild-eyed, weebegone apparitions who peer through the briars and torn grasses on the canvas, stained-glass, tiles, and tapestry of the Bloomsbury brotherhood. If Mr. Gilder have not seen and copied these figures it is alarming to think how much of this allegorical extravagance there must be in the air. But this is not the worst of it; these small, fair pages, with their pretty, fanciful woodcuts of flowers and peacock's feathers, are stained with the ferocious coarseness of the mystic-satyr school. This is one of several peculiarities in "The New Day" which rouse a hostility unfavorable to critical calmness. Another is the self-complacency which presents us with the following Song:—

"My love grew with the growing night,—

And my love dawned with the new daylight."

A poet must indeed have a conviction of the preciousness of his lines who sets two, or even four, like these, alone in the midst of a page.

There is careful work in some of the sonnets, and the result is an occasional effect of considerable dexterity, but it is like old goldsmith's work, or ivory-carving of no high value; even were it first-rate, it would be craft, not art. There is some good word-painting, of which the following water-color sketches are specimens:—

"A dun, bleak stretch that slants to the salt sea's gray,—

Rock-strewn, and scarred by fire, and rough with stubble,—

With here and there a bold, bright touch of color, —
 Berries and yellow leaves, — that make the dolor
 More dolorous still. Above, a sky of trouble.

“ But now a light is lifted in the air ;
 And though the sky is shadowed, fold on fold,
 By clouds that have the lightnings in their hold,
 That western gleam makes all the dim earth fair, —
 The sun shines forth and the gray sea is gold.”

There are a few fragments of genuine beauty in which the thought is simple, and not tormented by *conceits*. Of these the best are The River, and one real gem, “ I count my time by times that I meet thee.”

“ I count my time by times that I meet thee ;
 These are my yesterdays, my morrows, noons,
 And nights ; these are my old moons and my new moons.
 Slow fly the hours, fast the hours flee,
 If thou art far from, or art near to me :
 If thou art far, the bird's tunes are no tunes ;
 If thou art near, the wintry days are Junes. —
 Darkness is light, and sorrow cannot be.
 Thou art my dream come true, and thou my dream ;
 The air I breathe, the world wherein I dwell ;
 My journey's end thou art, and thou the way ;
 Thou art what I would be, yet only seem ;
 Thou art my heaven, and thou art my hell ;
 Thou art my ever-living judgment-day.”

The volume, although its contents are not perfectly homogeneous, is called “ A Poem,” and is a monument to living love ; it may therefore seem unfair to judge it piecemeal ; it is not hewn of a single block, however, but built up of many vagaries and phases, some of which are so obscurely and enigmatically expressed as to remain puzzles to the reader. If these are secrets between the lover and his mistress, the public has nothing to do with them at all ; but it appears to us that they are only thoughts, feelings, and emotions, belonging to the passion itself, and there is an impertinence in trying to disguise them in strange, miming masks.

Miss Preston prefaces her collection of “ Cartoons ” by a sort of apology, called “ The Good of It ” : —

“ When any task my hands essay
 Wherewith to fill the eager day,
 There rises to my thought alway,

"This hindering question, Whence the need
Of this, thy lightly-weighted deed?
Forego it, and who taketh heed?

"Amidst the thousand myriad lives
That overcrowd earth's human hives,
What matter if no work survives
Of thy small doing? —

"Mock meekness all! There doth not live
Any so poor but they may give,
Any so rich but may receive.

"Withhold the very meagrest dole
Hands can bestow, in part or whole,
And we may stint a starving soul.

"What then? — If one weak song of mine
Should yet prevail to bring the shine
Back o'er some spirit's dull decline,

"And for a moment seem to fling
A flash about its sun-setting, —
I think (God granting) I may sing."

If this plea be accepted, it leaves very little to say about her performances, or those of anybody who may take the same ground. There is an order of poetry which gives pleasure to numbers of people who find none in Milton, Dryden, Wordsworth, or Shelley, or even in Scott, Campbell, or Moore; if it were proscribed, it would rob life of a charm for thousands who are incapable of appreciating anything higher. But the same argument is good for the large class who tell you with some satisfaction that they do not understand your scientific composers (by whom they mean any one of standard merit, from Bach to Mendelssohn), but that nobody loves music more dearly than they do; and they do enjoy a modern ballad, or a waltz from one of Offenbach's operas, immensely, keep time to it with their head and feet, and hum or whistle it afterwards sentimentally. There are also hundreds of thousands who have no enjoyment in a good picture or engraving of any school, but rapturously admire Faith clinging to her cross, the Mother's Dream, and chromo-lithographs of bird's-nests and berries. Miss Preston's apology involves the whole question of whether a taste for what is not the best, nor even good, should be encouraged; but as this cannot be settled by a word, we will go on

to her Cartoons. In those from the *Life of the Old Masters* she has taken incidents and situations of more or less interest, and treated them in the manner of Mr. Browning's *Andrea del Sarto*, or *Fra Lippo Lippi*. This manner is easily copied and often copied, but success does not lie in similarity, which a parody can achieve. The attempt to imitate Mr. Browning's best work in his best way was too ambitious. These Cartoons have neither the dramatic nor picturesque power which their form and subjects demand. In those from the "*Life of the Legends*," Miss Preston has got together a number of pretty old stories, which read pleasantly in verse; in some of them, however, as, for instance, the death-scene of the Venerable Bede, entitled "*Consummatum Est*," the task of turning prose into metre does not seem worth the trouble, however slight this may have been. The poems from the "*Life of To-day*" are the best in the book, and published singly, as we suppose they originally were, would produce more effect than together, which makes their sameness and tameness too evident. The tameness is not helped by the expedients of broken sentences, exclamations, and interjected conversational parentheses; and Miss Preston should allow her readers to supply their own italics. Enforcing the emphasis by this means implies doubt, either of the intelligence of the public, or the strength of the passage so signalized.

We have turned over the Cartoons again and again in search of some poem, some verse, which should give a sense of the wholesome, agreeable flavor of the whole; they are almost all equally flowing, well-worded, easily rhymed; the difficulty is in choosing amid the unvarying commonplace of thought and expression. Miss Preston has an undeniable facility for versification; poetic talent is not discernible in these leaves, at any rate. It seems as if translation opened a wide and happy field for persons with her peculiar gift. A lady of her name has published a most charming version of the Provençal poem, "*Mireio*." The Misses Swanwick have given noble renderings of Goethe's "*Iphigenia*," and some of the Greek tragedies. Remembering how few, either French, German, or classic poets, are within the reach of those who read only English, we cannot but think that Miss Preston might brighten the lives of a great many more people by devoting her pen to this service.

It would be much easier to give an abridgment of De Quincey's "*Confessions of an Opium-Eater*" than of the "*Ship in the Desert*." The extreme difficulty of telling the story in the first instance may be gathered from several false starts which Mr. Miller himself makes. The introduction shows us a man in a slouch hat, a skin-clad trapper,

a tawny chief of Shoshones, and an Indian warrior (we do not know what four varieties these represent), all getting a horrid fright in the lonely desert of Arizona, the cause of which is never explained. But each time, just as we hope we are on the right track, we are jerked up with "Nay, nay, the tale is not of that." "Avaunt! the tale is not of it!" "No, no, this tale is not of him." "Arrête! the tale is not of that." "Away! the tale is not of these." "Tut, tut! the tale is not of this." At length, at the third canto, we are told: "But this the tale," and square ourselves to attend; the narrative opens on the Missouri, with the pursuit of a boat manned by negroes, and commanded by an old white sailor, by another boat with a crew of South Sea Islanders, led by a Spaniard. In the first boat is a woman, the heroine, by default, of the story, if it be a story. Now, surely, we are fairly under way. But not too fast, —

"Pursuer and pursued. And who
Are these that make the sable crew?

And who is he that leads them here?

Nay, these be idle themes. Let pass,
These be but men. We may forget
The wild sea-king, the tawny brave,
The frowning wold, the woody shore,
The tall-built, sunburnt men of Mars. . . .
But what and who was she, the fair?

A bride, or not a bride?

You shall not know. That shall not be
Brought from the future's great profound
This side the happy hunting-ground."

Mr. Miller seems to identify this problematical beauty with another who sat in his heart one day near Rome, and loved or did not love him, for we shall not know that either, he says. We become confused. Still the old sailor and the dark-eyed woman, the tall Spaniard, the negroes, and the Caribs are the actors in this extraordinary harlequinade, the scene of which shifts all across the continent, its mountains, its midmost wilderness, to the fertile latitudes beyond. But the poet's personality and reflections are hopelessly entangled with the thread of the story; and his determination to baffle impertinent curiosity keeps us in the dark so completely that we throw down the book at the end, and wonder what it was all about.

To instance the vices of taste, versification, and grammar, which occur in the poem, would require a book nearly as long as itself; one or two may be quoted as curious: —

"Adown *thine* wooded walls inwrought
With rose of Cherokee and vine."

"T was vastness, even as a sea

'T was like the dim edge of death is,

'T was hades, hell, eternity."

It abounds, besides, in exaggeration, incoherence, repetition, absurdity, and a species of boastful, false morality; much of it sounds like a capital parody of his own style. There is, however, a picturesqueness and freshness belonging to the unhackneyed scenes and modes of life which supply his imagery, a rough strength and vigor in character with the existence which he describes. There are some exceedingly striking passages, one especially on the march of the pioneers of 1869:—

"What stony, uncommon men were these,
These settlers hewing to the seas!
Great horny-handed men, and tan;
Men blown from any border-land;
Men desperate, and red of hand;
And men in love, and men in debt,
And men who lived but to forget,
And men whose very heart had died.

"Yet every man among them stood
Alone, along that sounding wood,
And every man somehow a man.

"What strength! what strife! what rude unrest!
What shocks! what half-shaped armies met!
A mighty nation moving west,
With all its steely sinews set
Against the living forests.—

"O bearded, stalwart, westmost men,
So tower-like, so Gothic built!
A kingdom won without the guilt
Of studied battle; that hath been
Your blood's inheritance. . . .

Your heirs

Know not your tombs. The great ploughshares
Cleave softly through the mellow loam
Where you have made eternal home
And set no sign."

The description of the plains and camps, day and night in the desert, and the emigrant trains with long processions of cattle, is even finer, but too long for an extract; these cantos, twelve and thirteen, just fall short of grandeur; unfortunately they are weakened by repetition. If this were the literature of a new language and a new race, if it were really the beginning of another era of thought and speech, we should judge it very differently; but time does not develop the frontier type, it destroys it: men and conditions, such as are celebrated above, and the very words in which they are praised are fortuitous, transient, born of brief circumstance, not to be renewed. The West, like the East, inherits the long line of English poets, and American ones to boot, and therefore we cannot consider Mr. Miller as the bard of a new dispensation more than any ignorant man anywhere, who has missed the benefit of knowing his predecessors. Portions of his productions excite admiration, but serious consideration or criticism of them would be out of place.

When the Duke of Argyle published his "Reign of Law," some quiet scoffers said that it was very good science for a duke. The English public, at least, will accept "Guido and Lita" as good enough poetry for a marquis, and the son-in-law of their Queen. The Academy says that Lord Lorne's poem is like a prize poem (by which every English reader understands the best sort of school-boy verses), and in saying that it says everything. The story is romantic, and so is the setting; the descriptions are exact; the chiming couplets fall upon the ear with the soft, steady cadence of a spring rain or a purling brook; there is a total absence of spirit, interest, life. It is not bad, but so monotonously mediocre, that there is nothing to quote above the rest, except the following passage, which, although ending with perhaps the worst line in the whole poem, has the power of truth:—

"The wind increases; the flotilla strown
Far o'er the seas is tossed apart, and thrown
From swelling ridges, whence the world is seen,
To lonely hollows walled with waters green.
Swift, ragged clouds eclipse the sea and sky,
And by the staggering ship pass shrieking by."

Yet a man must have a great turn for versification who can round and rhyme nearly twenty-five hundred lines smoothly, musically, without a serious flaw in melody or measure, nor is such finish attained without conscientious pains. There is no eking out the measure with words like "every" and "sovereign" by giving them false quantity. Some of the born geniuses on both sides the Atlantic might take a lesson in this from Lord Lorne.

- 8.—*The Age of Pericles: A History of the Politics and Arts of Greece from the Persian to the Peloponnesian War.* By WILLIAM WATKISS LLOYD. London. Macmillan & Co. 1875. 2 vols. pp. xviii. 390; xiv. 416.

THOUGH the Past, regarded as merely past, has no existence, and therefore does not change, any portion of it viewed in the Present will change its relations and proportions as the common boundary of the two eternities moves forward and alters men's level. Hence it will always be necessary to write and rewrite histories of past periods, in order to adjust them to the proportions of the larger-growing whole, whereof they will become larger or smaller fractions according to their evident measure of influence upon the Present. Especially is this true of that period which was familiarly known to the later Greeks as the *Pentekontaëtia*, and which, without any great abuse of language, may be called the Age of Pericles. For the last four hundred years, in spite of the inexorable direction of time, we seem to have been approaching that era, so much have its visible proportions been continually increasing. The Roman and mediæval mists, through which its brilliancy had to be tempered for eyes less eagle-like than those of the Hellenes, are gradually clearing away, and leaving an excellent opportunity to write a new history, for any one who has scaled the loftiest peaks of the Present. Whether Mr. Lloyd has done this, and so seized the opportunity, is the question which we shall now attempt to answer.

As regards the general scope of the work: To give a complete picture of the Age of Pericles, comprehending all those interwoven institutions through which humanity realizes itself as a spiritual essence, — religion, art, polity in its three grades of family, society, and state, and the education of the individual to a rational participation in these, — is something that Mr. Lloyd has not undertaken. What he has undertaken suffers in consequence. The political and artistic sides of Hellenic life, to which he professedly confines himself, are treated in a fragmentary way, and leave no sense of unity in the mind, such as one feels after reading Mommsen or Curtius. Mr. Lloyd is a member of the Society of Dilettanti, and probably would not feel aggrieved, if we should say that he has written this work in that capacity. It is not the work of one who, with impartial mind, has endeavored to absorb all the results of modern investigation and insight, careless of what man or people first arrived at them, but of one who, with strong leanings to art, and very settled political

views of a one-sided, French kind, writes very much for his own pleasure. The result, in this instance, is a popular work, which will doubtless be widely read, and for many reasons ought to be.

Though undertaking to write the artistic and political history of the *Pentekontaëtia* only, he has devoted one hundred and thirty-eight pages of the first volume to an account of the Persian wars, which is certainly a good deal of an "overlap" (Vol. I. p. 1). Moreover, he has given us three chapters on religion and its observances, two on philosophy, and one on Hellenic ethnology, all of which would properly enough have found a place in a work of larger scope. The chapter on the Eleusinian Mysteries is such as one might expect, if Lobeck had never written *Aglaophamus*. But Lobeck was a German, and Mr. Lloyd has a strong prejudice against everything German, including scholarship and politics. This crops out very frequently: for example, Vol. II. p. 231, where he alludes to "the confident expositions of ancient music by Boeckh and his successors," from which he says he has "always risen, wherever the fault may be, with a sense of sorrowful disappointment and stupor"; Vol. I. p. 402, where there is a very gratuitous and senseless fling at the German Empire, etc. Mr. Lloyd, however, pays dearly enough, in narrowness, for this prejudice, but for which his book would have been much better than it is.

Mr. Lloyd's *forte* is Greek art, more especially the material or so-called *apotelestic* arts, architecture, etc., in which he has elsewhere done some very valuable work. His prejudices against things German have, in some points, left him behind the times. For instance, he still speaks of the so-called Theseion as certainly the *heroön* of Theseus, whereas it is quite certain that it was not a *heroön* at all, being in all probability a temple of Hercules. The passage in Plutarch (*Theseus*, 35), cited to prove that "at Athens the Theseia and Heracleia were interchangeable," proves, if anything, the very opposite (*ὅσα ὑπῆρχε τεμένη πρότερον αὐτῷ, τῆς πόλεως ἐξελοῦσης, ἅπαντα καθιέρωσε τῷ Ἡρακλεῖ καὶ προσηγόρευσεν ἀντὶ Θησείων Ἡράκλεια, πλὴν τεσσάρων, ὡς Φιλόχορος ἰστόρηκεν*). Cp. Wachsmuth, *Die Stadt Athen im Alterthum*, Vol. I. pp. 357, *et seq.* There is nothing new or original in Mr. Lloyd's account of Greek art; but he has written popularly about it, and what he has said will meet the needs of a large public, upon whom his genuine enthusiasm cannot fail to have a most salutary and inspiring effect.

In the *practical* or immaterial arts, poetry, etc., our author is not so strong, although his enthusiasm is equally genuine. He has evidently read the Greek classics lovingly and appreciatively, as liter-

ature which is to be felt and enjoyed, not merely dissected. He has, however, following some French critics, — M. Taine, etc., — erred in endeavoring to find explanations or occasions for some of the master-pieces of Greek tragedy in contemporary political events and personages. In doing so, he has assigned to some of them purely arbitrary dates, for example, to the *Suppliants* of Æschylus, not to say that he has forced upon them meanings which the text in no way sustains. This attempt to weave the tragic poetry of Athens into her political history must be regarded as the most fanciful and weakest part of the book. If there be anything that Greek art and all true art eschews, it is just such allusions to the historical as such, to the merely ephemeral. To have made the grand myth of Prometheus a vehicle for the sorrows of Themistocles would have seemed to the Greek, with his exquisite sense of the befitting, and with his religious consciousness, hardly less outrageous than it would seem to us, if a dramatist should employ the story of the Crucifixion to impress upon us the fate of John Brown. It must be admitted that Mr. Lloyd's acquaintance with Greek literature, extensive as it is, is not that of a profound critic gifted with philosophic insight, or that of an accurate scholar; but rather that of a dilettante. He never penetrates into the principle, the idea, that lies at the base of all Greek mimetic art, the effort to present a deed in its entirety. His lack of accurate scholarship frequently manifests itself; for example, Vol. I. p. 132, he speaks of the "promontory of Lectos," instead of Lecton or Lectum (τὸ Λέκτον, Athenæus, *Deipn.*, III. 88 F.); p. 233, of the "*exarchon*, the leader of the chorus," instead of *exarchos* (ἐξάρχος); II. p. 298, he makes the atoms of Democritus differ in "figure and form" (σχῆμα and εἶδος). How figure differs from form we cannot say; but Aristotle, who is our authority on the subject, tells us that these atoms were supposed to differ ῥυσμῶ καὶ διαθιγῇ καὶ τρόπῳ, words which he renders into his own terminology by σχήματι καὶ τάξει καὶ θέσει. (*Meph.*, I. 4.) Page 167, he implies that Κρόνος and χρόνος were originally identical, Kronos being merely a personification of time. This notion has long since been exploded. (*Vid.* Curtius, *Grundzüge*, p. 159; *Studien*, Vol. V. p. 148 [10].) Page 375, he tells us that "the connections of some of the preserved plays of Sophocles — so I have convinced myself — may be established as satisfactorily" as the fact that the *Oresteia* of Æschylus forms a trilogy. The "some" here can, of course, refer only to the Theban tragedies, the two *Œdipuses* and the *Antigone*; and these, as has been sufficiently shown by Leopold Schmidt in *Symbola Philologorum Bonnen-sium*, pp. 219, *et seq.*, do not form a trilogy.

In writing this work Mr. Lloyd has relied mainly on the original

historical authorities, Herodotus, Thucydides, Plutarch, etc., rarely referring to a modern work, and never, we believe, to an inscription. Although he does not seem, before using these authorities, to have come to any definite conclusion respecting their comparative credibility, or the extent of the indebtedness of one to another, it must be admitted that he has, in the main, used them judiciously. His dislike to Aristophanes, whom he evidently cannot forgive for having been on the side of aristocracy and for having held Euripides up to ridicule (Vol. I. p. 374), has prevented him from referring, to any great extent, to him. What modern authorities he may have consulted we cannot say. His chronology coincides pretty closely with that of Pierson (*Philologus*, Vol. XXVIII. 1869), and does not deviate very far from that of Krüger, Grote, Curtius, or Schaefer.

Mr. Lloyd cannot be called a good writer. He is never eloquent, and often awkward and clumsy. The interest of his work comes from the subject, and the decided views of the author, never from the style. He has a fondness for new and unusual words and expressions: for example, *regnal* (Vol. I. p. 156); *taken over*, i. e., undertaken, *übernommen* (p. 197); *gave loose* (p. 205); *disserted* (Vol. II. p. 131); *supersession* (p. 294); *militarised*, *counter-sense* (p. 329); *hoplite Athenians* (p. 343); *command-in-chief* (p. 346); *contravert* (p. 356); *gods of ratifying oaths*, i. e. ὅρκιοι θεοί (p. 360); *inartificiality* = inartistic nature (p. 379); *aby* (p. 376, and elsewhere); *countervail*, occurring more than twenty times, etc. The book is not free from typographical mistakes, for example, *Ægypt*, *Stoboeus*, *comoedian* (or is this intentional?); and the references at the foot of the pages are often very misleading. For example, if we were to trust the two on page 102 (Vol. II.), we should attribute eleven books to Aristotle's *Politics*, and a hundred and eleven to the Pseudo(?)-Xenophontic tractate on the *Polity of the Athenians*. Instead of XI. 4 and CXI. 7, we must read II. 7 and III. 7.

We have intentionally dwelt more upon the shortcomings of Mr. Lloyd's book than upon its merits, although these are neither small nor few. As a popular history of one of the most remarkable periods in human development, it supplies an immediate and deeply felt need. Many persons, to whom Polygnotus, Pheidias, Æschylus, etc. have been previously little more than names, will rise from the book enlightened, and encouraged to seek further information. At the same time, we wish to emphasize the fact that it is far from being an adequate history of the Age of Pericles, such a history as might be written by a profound scholar gifted with philosophic insight, poetic inspiration, and mastery of style. Such a history — and there could be few more grateful tasks — has yet to be written.

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